Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-835

JOHN LOUIS WILSON,
DUDE PETTEGREW,

Petitioners,

-vs-

THE PEOPLE OF THE STATE OF CALIFORNIA, BY THEIR ATTORNEY, GEORGE DEUKMEJIAN, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL,

FOURTH DISTRICT, SECOND DIVISION

OF THE STATE OF CALIFORNIA

WALLACE B. FARRELL
255 N. "D" Street
Suite 411
San Bernardino, CA.
92401
Telephone: 714/888-1366
Attorney for Petitioners

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Petitioners respectfully allege as follows:

I

Petitioners are individuals, citizens of the United States of America and residents of the State of California.

II

Respondent is the People of the State of California in the form of the Attorney General of the State of California.

III

Other persons or entities interested in and who or which will be directly affected by this proceeding are the District Attorney of the County of San Bernardino, State of California, the Court of Appeal, Fourth District, of the State of California and the Supreme Court of the State of California.

IV

On or about June 28, 1977, an Indictment was returned by the Grand Jury for the County of San Bernardino, State of California concerning Petitioners and others unnamed herein. In said Indictment, Petitioners were variously charged with conspiracy to and manufacturing, possessing

and distributing controlled substances. Each crime charged is a felony by the law of California.

V

Thereafter, Petitioners were duly arraigned in the Superior Court for the County of San Bernardino. Each Petitioner entered a plea of not guilty.

VI

On or about July 23, 1977, trial by Jury was scheduled for January 16, 1978.

VII

On or about August 11, 1977, the matter was assigned to the Honorable Don A. Turner, Judge of the Superior Court, for any and all additional proceedings.

VIII

On or about December 12, 1977, various pretrial motions were scheduled to be presented and heard by said Court preceeding Trial by jury on January 16, 1978.

IX

The pretrial motions to be heard related to setting aside the indictment and suppressing various items of tangible and intangible evidence seized by state law enforcement officials.

X

Said pretrial motions were litigated on January 16, 17, 23, 24, 25 and 26, 1978. Testimonial and documentary evidence was proffered by the parties.

XI

On or about January 30, 1978, each and every pretrial motion was denied by the aforementioned Don A. Turner, Judge.

XII

On or about January 30, 1978, Petitioners withdrew their previously entered pleas of not guilty and entered in their place and stead, pleas of guilty.

XIII

Had the pretrial motions been granted as prayed, the incriminating evidence against Petitioners would have been excluded from the consideration of the jury. Consequently neither Petitioner would have sustained a conviction of the aforementioned violations of law. Moreover, neither Petitioner would otherwise have entered a plea of guilty.

XIV

Upon entry of the pleas of guilty, the matter was referred to the Probation Officer of the County of San Bernardino, State of California, for his report and recommendation regarding the terms and conditions of probation or punishment to be instituted.

XV

On or about March 10, 1978, the application for probation made by each

Petitioner was rejected, whereupon each Petitioner was committed to the State Prison of the State of California for the term prescribed by the law of said state.

XVI

On or about March 16, 1978, a Notice of Appeal was filed in the Superior Court of the County of San Bernardino.

XVII

On or about March 16, 1978, execution of said sentence was stayed pending consideration and exhaustion of any and all appellate and extraordinary remedies.

XVIII

The appeal of each Petitioner was considered by the Court of Appeal, Fourth District, Second Division, of the State of California. The judgment of the lower court was affirmed by the Court of Appeal on March 20, 1979. A copy of said

judgment and opinion is attached hereto, marked Appendix A, and incorporated by reference herein.

XIX

Thereafter, a Petition for Hearing was filed in the Supreme Court of the State of California.

XX

On or about May 30, 1979, the Petition for Hearing was denied by said Supreme Court of the State of California. Said denial was without written opinion by said Supreme Court.

XXI

Each of the aforementioned appellate tribunals had a clear present and existing legal duty arising in accordance with statutory and decisional law which enjoins on each court the obligation to suppress and exclude from admission evidence obtained through means repugnant to the Constitution of the State of California and the United

States of America.

XXII

Petitioners were entitled to proper performance by these courts of their clear and present duties since Petitioners will otherwise be remanded to prison for several years of their lives by enforcement of the judgment.

XXIII

The decisions of each of the aforementioned trial and appellate courts were judicial acts.

XXIV

On or about June 4, 1978, the judgment of the Court of Appeal became final. Accordingly, a Remititur was issued by the Court of Appeal to the Superior Court. Notice was dispatched to counsel on June 18, 1979. A copy of said document is attached hereto, marked Appendix B, and incorporated herein.

XXV

This judgment constitutes the final judgment in the highest Court in which decision could be had.

XXVI

A certified record of all proceedings below, whether oral or written, has not been filed with this Petition. Such record shall be lodged with this Honorable Court should the Petition be accepted.

XXVII

This Petition has not been filed within ninety days of the final judgment. Nonetheless, in accordance with Rule 22, Petitioners request that an extension be granted without consideration of whether this application was filed timely. In support of the request for late filing, refer to the affidavit of counsel, attached hereto, marked Appendix C, and incorporated herein.

XXVIII

The jurisdiction of this Honorable

Court is invoked pursuant to 18 U.S.C. Section 1257(3).

XXIX

The federal issues engendered by the Petition relate primarily to contraventions of the Fourth, Fifth and Sixth Amendments to the Constitution of the United States. The central issues devolve to the following:

A. The issuance of a search warrant without probable cause.

B. The intentional ommission of material and relevant facts concerning an unidentified informant which would impeach the credibility of said informant and would tend to mislead the magistrate. Such mistatement or omission violates the Fourth Amendment as explicated in Nanthanson v. United States, 390 U.S. 41 (1933), and Aguilar v. Texas, 378 U.S. 108 (1964).

C. The issuance of a prohibited

general or geographic warrant in violation of the requirement of particularity and probable cause in violation of the Fourth Amendment as provided by the decision of United States v. Almeida-Sanchez, 413 U.S. 266 (1973) and Terry v. Ohio, 392 U.S. 1 (1968).

D. A forcible entry into a private dwelling without notice to its occupants in violation of the doctrine of Weeks v. United States, 232 U.S. 383 (1914).

E. The use of testimonial evidence extending from an unlawful detention, as condemned in the decision of Wong Sun v. United States, 371 U.S. 471 (1963). This final issue is the most intriging since the state trial court permitted the production of a witness who was secured through the execution of a search warrant which was quashed by the very same trial court.

XXX

The pivotal constitution provision

involved is the right of the people to be secure in their persons, houses, papers and affects against unreasonable searches and seizures as provided by the Fourth Amendment.

XXXI

The interpretation of Article I, Section 19, of the Constitution of the State of California by the judicial officers as described herein is repugnant to the Constitution of the United States because it condones searches and seizures without probable cause.

XXXII

The federal constitutional question is of importance in the administration of justice since uniformity of application is necessitated regarding a recurring issue.

XXXIII

Petitioners have complied with all

conditions precedent to the performance of the constitutional duties of these courts. These courts have been able to perform their proper duties. Notwithstanding, said courts have failed and refused to perform such duty.

WHEREFORE, Petitioners respectfully request that this Honorable Court accept this Petition, review the decision of said state court, and issue all necessary orders in accordance with law.

Dated this 9 day of Nov, 1979.

Respectfully submitted,

WALLACE B. FARRELL,
255 N. "D" St., Ste. 411
San Bernardino, CA. 92401

I, WALLACE BURRELL FARRELL, declare that I am a member of the Bar of the United States Supreme Court having been duly admitted on May 19, 1975.

WALLACE BURRELL FARRELL

IN THE SUPREME COURT OF THE UNITED STATES

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No._____

JOHN LOUIS WILSON, DUDE PETTEGREW, Petitioners, -vs- THE PEOPLE OF THE STATE OF CALIFORNIA, BY THEIR ATTORNEY, GEORGE DEUKMEJIAN, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Respondent.	POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

" The poorest man in his cottage may bid defiance to all the forces of the crown. It may be frail; its roof may shake; the winds may blow through it; the storms may enter - - but the King of England cannot enter". Pitt The Elder.

QUESTIONS PRESENTED

I

Whether the intentional or reckless omission of material facts must invalidate an affidavit and all search warrants which flow from it.

II

Whether a search warrant is unduly broad in its scope which describes three separate and distinct structures to be searched where the probable cause, if any, exists to believe that only one of the three places contains controlled substances.

III

Whether a forcible entry to execute a search warrant can be made of three locations virtually simultaneously when probable cause exists to believe that only one of the three places contains contraband.

IV

Whether an announcement and demand for entry, followed by a wait of 30 - 45

seconds before forcible entry is effectuated, sufficiently apprises the occupants thereof in compliance with state and federal notice obligations.

V

Whether police officers who are by ruling of the lower court, unlawfully in a private dwelling place may intercept a telephone call, initiate the arrest of the caller, search his vehicle, and thereafter use the testimony of the caller as a witness before a Grand Jury and as a proposed witness for trial.

STATEMENT OF CASE

On October 7, 1976, a San Bernardino Sheriff's detective, James M. Bryan, prepared an affidavit on the basis of which four separate search warrants were issued authorizing searches of the following premises:

(1) Premises located at 8587 Locust Street, Fontana, California.

(2) Premises located at 1153 Seventh

Street, Colton, California.

(3) Premises located at 18569 Eleventh Street, Bloomington, California.

(4) Premises located southwest of Cajon Boulevard approximately 1.6 miles from the intersection of Kenwood Avenue and Cajon Boulevard.

The trial judge granted motions to quash the warrants that authorized the searches of the Locust Street and Eleventh Street premises on the ground that the affidavit was insufficient to support thoses warrants. Similar motions to quash the warrants issued against the Seventh Street and Cajon locations were denied.

Detective Bryan testified during the motion to suppress that he is a narcotics detective with the Sheriff's office in San Bernardino County. On October 7, 1976, he prepared an affidavit for a series of search warrants. His informant was not named in the affidavit. The search warrants and accompanying

affidavits are marked collectively Appendix D, E, F and G, and are incorporated by reference herein.

At the bottom of page 2 of the affidavit, the following statement appears in the officer's own handwriting:

> "Affiant attests that the informant is a long-time resident of the area, has no past arrest, has knowledge of criminal activity, there is no indication of actual involvement in criminal activity."

Detective Bryan added that handwritten statement to the affidavit because the magistrate who was considering the issuance of the search warrants raised the question of whether the informant was a co-conspirator or a citizen-informer. It was Bryan's intention to convey to the magistrate that his informer was in no fashion involved in the manufacture or sale of controlled substances.

His affidavit states that the informant has seen amphetamines sold by one Bud Nykiel

on a number of occasions and specifically to Petitioner Pettegrew and his wife. But at the hearing on the motion to suppress evidence, Bryan said his informant had not actually seen the sales but had observed conduct from which he assumed sales had been made. When asked why he had misstated the circumstances in his affidavit, he exclaimed:

> "I wasn't suggesting. I think it is just a misuse of the words. I don't know. What can I say"?

The magistrate was not told that the informant had obtained pills herself on a number of occasions from Nykiel or that her former husband was a drug smuggler. Nor was the magistrate advised that on one occasion the informant had once handled Forty Thousand Dollars for Nykiel by removing it from a safe, counting it, and giving it to another on his behalf.

His explanation for not including

that remarkable bit of information about the informant is the following:

> "The only thing I can say is probably we had been up for about 23 hours and I had a lot of reports to look at, and I just neglected to put it in there when I wrote the search warrant. I had to write six search warrants, and I had been up like I say, 23 hours then, and we had a lot more work to do".

Bryan's effort to portray his informant as a citizen-informant was so plainly abortive that the prosecuting attorney in the trial court conceded that the informant could not so qualify.

Obviously the issuing magistrate was concerned about the status of the informant, else he would not have presented the questions he did to Bryan. The indisputably misleading characterization of the informant apparently inplanted in the magistrate's mind the notion that the informant could qualify as a citizen-informant. The failure to incorporate pertinent and material facts

about the informant's background was either conscious and deliberate, which he denied or else he is guilty of an omission that can only be described as reckless and negligent.

It is intolerable for an officer to suggest to the trial court that he left out material facts by implying he was tired when he prepared the affidavit or by shrugging his shoulders and saying: "What can I say?" Bryan thereupon undertook to portray an image of the informant which plainly was unwarranted and unsupported by the true circumstances.

The so called Cajon search warrant, which was issued on the basis of the Bryan affidavit and was received in evidence at the suppression hearing, states in pertinent part the following:

> "YOU ARE COMMANDED at any time of the day or night to make immediate search of three dwellings located on the particular lot on the south

side of Cajon Boulevard, being north-west from the intersection from Cajon Boulevard and Kenwood Drive, approximately 1-6/10 of a mile. The dwellings further described as one and two being beige stucco single-story dwellings with dark brown wooden trim, further described as having a faded green asphalt composition roof. Dwelling number two as indicated by diagram, further described as having an added-on addition to the dwelling, being on the southmost portion of the dwelling. Premises further described as having a third building being an out-building located southwest of dwelling number two (refer to diagram)."

Inside one of the three places, Bryan expected to find an illegal pill press. His testimony on the subject is the following:

"Q. Well, the information you had was that there was a pill press over there in that general area?
A. We had information that the pill press was located on the premises described to us as having the two buildings and the fence around it, and the approximate distance from the main highway. And then we surveilled the vehicle into that area.
Q. Who was the source of that information?
A. Benjamin.
Q. Did he say he had ever been over

there?
A. According to him he had. It was described to him by Donald Schreiner.
Q. And you then knew before you went over there that there were three possible dwelling places, is that right?
A. Yes.
Q. But you didn't know which one of the three?
A. No, sir, we didn't."

The affidavit received in evidence in the trial court contains the following language:

"The affiant was informed by Detective Stratton and Detective Donegan that during the course of the interview with Randall Richard Benjamin that Benjamin had told them that there was a clandestine laboratory for the purpose of producing amphetamine tablets located somewhere between San Bernardino and Victorville and that Benjamin had been informed of this by Donald Schreiner."

The vice of this particular search warrant is not that it was issued on the basis of insufficient probable cause, but rather that the magistrate and the affiant engaged in a constitutional shell game. Under which walnut is the pea? In which place is the pill press?

The warrant authorizes a search of three separate buildings. Behind the door of one of them is thought to be an illegal pill press. The police could not ascertain or devine which one, so they sought permission to intrude forcibly into all three. Worse yet, the magistrate allowed them to do so.

The judge who heard the motion to suppress the warrant in the trial court denied the motion to quash the Cajon warrant with language that suggests a measure of confusion about the evidence. Nowhere does the affidavit or the affiant hint of an expectation that more than a single pill press might be found at the Cajon location. Yet the court opined in denying hte motion that:

> "There is a danger that there is more than one building, and the search warrant was directing them to search all three of the structures on that piece of property

> not knowing of course whether the laboratory was contained in all three of the structures or in two of the structures. But there was sufficient information to believe that there was a laboratory there in one, two or three of those buildings, and to justify the search of the buildings. The motion to quash is denied."

Approximately ten officers went over to the Cajon location at about 6:00 p.m. to execute the warrant. Bryan described what he found there as follows:

> "There were two main buildings and a rear building. One appeared to be like a bungalow, two exact apartment types, and the other was like a regular house."

The dwelling was entered first by an officer kicking in the door. Shortly thereafter Bryan and other officers kicked in the doors to the other two locations. When asked why both doors were breached simultaneously, Bryan replied:

> "Because we didn't know where the suspects were inside the dwelling."

Before the forcible entries were

made, the officer announced themselves and stated that they had a search warrant. No noise of any kind was heard from within, not the ubiquitous flushing toilet or retreating footsteps or anything of that sort. Nor did Bryan even know whether anyone was inside. At first he testified that the officers waited 30 - 45 seconds before making their forcible entries but later he said:

> "I think we probably stayed outside half a minute at the most."

Certainly there was no express refusal of admittance in the instant case. Nor do the circumstances justify the conclusion that there was an implied refusal. All that greeted the officers when they knocked and announced was utter silence. There is no suggestion in the evidence that they had any reason to believe that there was anybody inside. They could hear no machinery grinding, no stereo playing, no footsteps padding about the premises, no toilets flushing, no voices speaking,

no water running: nothing. Moreover, it was a pill press they were after and the toilet has not yet been invented down which such a contraption might be flushed.

All this is to say nothing of the frightening picture of police officers kicking in three doors at or about the same time merely because they believe that behind one of them they will find contraband.

Even the Judge in the trial court was somewhat troubled, as reflected in his comment:

> "The Court, although somewhat critical of the time of waiting, cannot say as a matter of law that it was insufficient to allow them to interpret that space of time as a refusal of admission. The motion to suppress is denied."

Of the four search warrants which were based upon Bryan's October 7 affidavit, the trial court quashed two of them and sustained the other two. One of the searches for which the warrant was quashed concerns

the search at Locust Street. The trial court, after hearing evidence and argument, granted the motion to quash the warrant closing his ruling with the following comment:

> "The motion to quash the search warrant so far as it relates to the Locust Street address is granted on the ground that the affidavit in support of the search warrant shows no cause to believe that contraband or evidentiary matter would be found at that address."

One of the five officers who executed that particular warrant was Patrick H. English, who testified at the hearing on the motion to suppress. English testified that while he and the other officers were on the Locust premises, there were five telephone calls to that location and that he monitored all but two. One of the calls was a male who stated that there was to be a "big" transaction with "Johhny" and "Pete" that evening. One of English's brother officers was pretending to be an associate of "Johnny" and "Pete". The male caller

identified himself as "Jerry" and English recognized the voice as being that of Jerry Martin.

There was a second call from "Jerry" warning the persons at the Locust premises that police were at other locations and that everybody at Locust should "stay cool". In the first of his two calls, the man known as "Jerry" left a telephone number. All five of the calls occurred between 6:25 p.m. and 7:00 p.m.. Shortly thereafter the officers called "Jerry" and set up a meeting for the intersection of Rancho and L Streets. English had in the meantime located Jerry Martin's residence and followed him to the rendezvous point.

Martin's vehicle, described as a "big step-side van, kind of a two and a half ton truck with sides on the top." was searched and a large pill press seized. Upon the seizure of the press, Martin was himself

arrested.

Within half an hour of his arrest, there were some initial discussions between the officer and Martin concerning the latter's cooperation in the investigation. English testified there were "anywhere from three to ten" interviews with Martin on the subject of his cooperation. In one of those interviews, probably occurring the day after the arrest, the question of having Martin testify as a witness for the prosecution was discussed.

Another officer, Gene A. Bowlin, became involved in negotiations with the District Attorney's office regarding Martin and his cooperation and on October 20, 1976, wrote a memorandum on that subject. Though authored by Bowlin, the memorandum carried the signature of a captain of the Narcotics Enforcement Unit. That memorandum, among other things, contains the following statements:

> "Subject Jerry Keith Martin had been interviewed by Sergeant Bowlin and Detective Mike Bryan, although not interviewed in-depth, it appears in our opinion that with his testimony we could obtain a conviction on John Sylvas and Joseph Swetkovich as well as strengthen our case against the other suspects in the conspiracy. It is the opinion of the investigating officers that suspect Jerry Martin should be used as a witness for the People . . ."
>
> "The involvement by Jerry Keith Martin was that he was delivering the large pill press to the suspect John Swetkovich and the press was being sold by Swetkovich to suspect Wilson and Sylvas."

Martin did testify before the Grand Jury and his testimony was alluded to in an exchange between the trial court and one of the attorneys at the hearing of the motion.

Petitioners contend that the officers had no right to intercept the telephone calls to the Locust Street premises in the first place.

Subsequently, Martin quickly fell into the trap set for him by the officers. Upon his arrival at the meeting point, his

vehicle was searched and the pill press was seized. There was no search warrant empowering that search, no consent from Martin to justify it, and no lawful arrest to which it might be incidental.

The trial court suppressed the statement made in the course of the telephone calls. But it further held that the seizure of the press was lawful and that Martin's cooperation in agreeing to testify against the Petitioners was also lawfully obtained. The court stated specifically that it was finding that the information obtained from Martin would not have been independently discovered but that it was sufficiently attenuated so that it was admissible.

ARGUMENT

I

THE COURT HAS JURISDICTION TO CONSIDER THIS PETITION SINCE A FEDERAL ISSUE IS INVOLVED AND THE STATE COURT OF HIGHEST JURISDICTION

HAS ACTED.

United States Code
18, Section 1257(3).

II

THE FEDERAL ISSUE INVOLVED CONCERNS THE RIGHT OF CITIZENS TO BE SECURE IN THEIR PERSONS AND EFFECTS.

Even though a state court has acted in this matter, the Supreme Court of the United States should intervene to protect the fundamental interests of citizens in liberty by virtue of the Fourteenth Amendment.

> "Among the historic liberties so protected was a right to be free from, and to obtain judicial relief, for unjustifiable intrusions on personal security."
> Ingraham v. Wright,
> 430 U.S. 651, 673

III

PETITIONERS HAVE STANDING TO ASSERT THE CONTRAVENTION OF THEIR CONSTITUTIONAL RIGHTS AND THOSE OF OTHERS AS WELL.

A. Petitioner Have Standing To Object To An Unlawful Search And Seizure As They Are With Possession Of The Material Which Forms The Basis Of The Indictment.

In Jones v. United States, 362, U.S. 257, (1960), an occasional occupant of an apartment was held to have standing to object to a search of that apartment. Jones was charged with possession of narcotics at the time of the contested search, just as Mr. Sanchez is so charged. Pursuant thereto, the Supreme Court recognized the concept of "automatic standing". The rationale for the concept is as follows:

> "The same element in this prosecution which has caused a delemma, i.e. that possession both convicts and confers standing, eliminates any necessity for a preliminary showing of an interest in the premises searched or the property seized which ordinarly is required when standing is challenged". . . . "The possession on the basis of which petitioner is to be and was convicted suffices to give him standing". (Id at 263)

As pointed out by the Court in Jones, supra, where the indictment itself charges possession at the time of the search and seizure "the defendant in a very real sense is revealed as a 'person aggrieved by an unlawful search ad seizure' upon a motion to suppress

evidence prior to trial." Id at 264.

In Simmons v. United States, 390 U.S. 377, (1968), the Supreme Court reaffirmed the test set forth in Jones and stated

> ". . .First, we hold that when, as in Jones possession of the seized evidence is itself an essential element of the offense with which the defendant is charged, the government is precluded from denying that the defendant has the requisite possessory interest to challenge the admission of the evidence".

Finally, other Ninth Circuit cases support the concept of automatic standing. In United States v. Boston, 510 F.2d 35 (1974), a case involving a vaginal search of the defendant's female companion, the Court held that since the defendant was charged with possession of heroin with intent to distribute, he had automatic standing to challenge the search and the evidence should not have been admitted.

B. Petitioners Further Have Standing To Challenge The Detention of Randall Benjamin.

Typically, a defendant does not enjoy standing to assert an independent constitutional

right to exclude evidence seized from another. However, Petitioners contend that standing accrues to them in a circumstance where illegally obtained statements from a third party to obtain a search warrant allowing an intrusion into their private residences. Rakas v. Illinois, 99 Sup. Ct. 421 (1978);

IV

A SEARCH WARRANT PERMITTING THE EXPLORATION OF SEVERAL BUILDINGS, WITHOUT PROBABLE CAUSE AS TO EACH, IS A PROHIBITED GENERAL WARRANT.

A. The Fourth Amendment Was Adopted As A Reaction To The General Warrant Of England.

Stanford v. Texas,
379 U.S. 476 (1965).

B. There Must Be Adequate Probable Cause To Search Each Dwelling To Be Searched.

United States v. Bedford,
519 Fed.2d 630 (1975);

United States v. Poppett,
227 F. Supp. 73 (1964);

Tynan v. United States,
297 Fed.2d 177 (1924).

V

AN INTENTIONAL MISREPRESENTATION BY A GOVERNMENT OFFICER RENDERS A WARRANT BASED UPON SUCH INVALID.

United States v. Bridges,
499 Fed. 2d 179, (1969),
cert. den.

VI

THE INTERCEPTION OF THE TELEPHONE CALL AND DETENTION OF BENJAMIN WERE UNLAWFUL.

A. Intercepting The Telephone Call Was Beyond The Scope Of The Warrant And Invaded The Privacy Of The Caller.

United States v. Clegg
509 Fed.2d 605 (1975).

B. The Detention Of Benjamin Was Unlawful.

United States v. Bignoni-Ponce,
422 U.S. 873 (1975);

Terry v. Ohio,
392 U.S. 1 (1968).

C. The Victim Of An Unlawful Search Cannot Thereafter Be Compelled To Be A Witness.

Jacobs v. Warden,
367 Fed.2d 321 (1966).

VII

BURSTING INTO PREMISES WITHOUT ADEQUATE NOTICE IS UNLAWFUL.

United States v. Bustamonte-Gomez, 488 Fed.2d 4 (1973);

Sabbath v. United States, 391 U.S. 585 (1968);

Muller v. United States, 357 U.S. 301 (1958);

Ker v. California, 374 U.S. 23 (1963).

Respectfully submitted this 29th day of October, 1979 at San Bernardino , California.

WALLACE B. FARRELL,
255 N. "D" Street
Suite 411
San Bernardino, CA.
92401
714/888-1366
Attorney for Petitioners

APPENDIX

APPENDIX A

COURT OF APPEAL, FOURTH DISTRICT

SECOND DIVISION

STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	4 Crim. 9885
Plaintiff and Respondent,	)	(Super. Ct.
	)	No. CR-34012
-vs-	)	
	)	OPINION
JOHN LOUIS WILSON, SYLVAS JOHN SCHLAX and DUDE PETTEGREW,	)	
	)	
Defendants and Appellants.	)	

APPEALS from judgments of the Superior Court of San Bernardino County. Judgments affirmed.

Richard A. Walton for Defendants and Appellants John Louis Wilson and Dude Pettegrew.

Ron Minkin for Defendant and Appellant Sylvas John Schlax.

George Deukmejian, Attorney General, A. Wells Petersen and Gary W. Schons, Deputy Attorneys General, for Plaintiff

and Respondent.

Defendants Wilson, Pettegrew and Schlax appeal from judgments of conviction following pleas of guilty to and sentencing on Count I of an indictment charging conspiracy to manufacture, compound and sell a controlled substance (amphetamine) in violation of Health and Safety Code section 11379. The questions raised on this appeal relate to the trial court's denial of numerous motions to suppress under Penal Code section 1538.5. If any of the defendants' contentions on appeal are sustained, under People v. Hill (1974) 12 Cal.3d 731, 769 (overruled on another point in People v. DeVaughn, 18 Cal.3d 889, 896, fn. 5), defendants are entitled to elect to withdraw their guilty pleas and proceed with a trial.

The trial court sat as a finder of fact. The judge passed on the credibility of witness, weighed the testimony and drew

factual inferences. The trial court's findings on factual matters, express or implied, are to be upheld if supported by substantial evidence. Although the issue of reasonableness is one of law, the trial court's conclusions in that regard should not be challenged lightly. On appeal, however, it is up to the appellate court to measure the facts as found by the trial court against the constitutional standard of reasonableness. (People v. Lawler (1973) 9 Cal.3d 156, 160.) On appeal it is presumed that the trial court impliedly found every fact to be true to support its ruling. (People v. Castaneda (1969) 1 Cal. App.3d 477, 484.)

No issue has been raised by the plaintiff regarding defendants' standing to question the legality of any of the search and seizure activities of the police.

I

SEARCH WARRANT NO. 2085(a)

On October 7, 1976, detective James

Bryan from the San Bernardino sheriff's office obtained a search warrant, No. 2085(a), for four separate locations: (1) a dwelling on Locust St, in Fontana (Wilson), (2) a dwelling on Seventh St. in Colton (Schreiner), (3) a dwelling on Eleventh St. in Bloomington (Pettegrew), and (4) three buildings referred to as the Cajon Blvd. premises (laboratory).

The affidavit in support of the search warrant disclosed that on August 24, 1976, Frank Nykiel suffered fatal injuries in an explosion and fire at a residence on Almond Ave. in Fontana. Items found after the explosion indicated that the Almond Ave. premises were being used in the manufacture of amphetamine powder.

Following Nykiel's death, an informant (later identified as Ruth Burk), contacted the police and ultimately was interviewed extensively by Bryan. Burk, a close friend of Nykiel, had observed him selling amphetimines from the Locust Ave. address in

Fontana from 1972 through June 1976. Among the purchasers was Dude Pedigrew (Pettegrew). Burk told Bryan of being introduced to Wilson in early 1976 by Nykiel, who told her that Wilson had just been released from prison. Burk further said that Nykiel told her of his partnership with Wilson in the manufacture and sale of amphetamines and that Wilson wanted Nykiel to set up a clandestine lab for manufacturing amphetamine powder.

Nykiel also told Burk that there were to be four partners in this clandestine operation -- Nykiel, Wilson, Pete Silas and Donald Schreiner. Among the purchasers of amphetamines from Nykiel prior to 1976 was Schreiner. Burk related other statements from Nykiel as well as form Nykiel's friend Sharron Rigdon, expanding on Nykiel and Wilson's association in the manufacture of amphetamines subsequent to March 1976.

Bryan obtained information from the

Colton Police Department relative to the arrest of Randall Richard Benjamin on October 6, 1976, for possession of a large quantity of amphetamine tablets. According to Benjamin, Schreiner was the source of the tablets. From the interview with Benjamin and a surreptitiously recorded conversation between Benjamin (who was wired for sound) and Schreiner, it was lwarned that there was a clandestine lab for manufacturing amphetamines somewhere between San Bernardino and Victorville. Schreiner related to Benjamin tha Pettegrew had been at the lab for 20 hours and that he (Schreiner)was going to the lab. Benjamin told of picking up the pills which he possessed when arrested from Schreiner's residence at the Seventh St., Colton address

Police surveillance covered Schreiner leaving his Seventh St. address, going to Pettegrew's residence on Eleventh St. in

Bloomington and thence to the Cajon Blvd. premises. Schreiner parked his van between the two residence buildings at Cajon Blvd. Schreiner had described to Benjamin the location of the clandestine lab as being on a lot with two dwellings adjacent to each other -- one being empty and the other containing the lab.

Benjamin further stated that Schreiner had introduced him to a "Johnny" and mentioned "Pete" -- both members of the organization. He said that "Pete" was not his "real name."

The affidavit related in corroboration of Benjamin's statements, the circumstances of a sale of amphetamines ("controlled" by the police) by Benjamin to one Cowart.

II

SEARCH WARRANT NO. 3003

On November 16, 1976, Detective Bryan obtained a search warrant for 3403 Avalon, Riverside. He also obtained arrest warrants

for defendants Wilson and Schlax.

In addition to most of the information related in the affidavit for search warrant No. 2085(a), Bryan related that Burk had told of being introduced to "Pete Silas" at the Locust St. residence when Nykiel lived there. Nykiel had told her of his partnership with Wilson, "Pete Silas"," and Schreiner and that "Pete" was the money behind the organization. Sherry Rigdon also told Burk of Pete's involvement, stati that Pete lived in the Riverside area in a large house on top of a hill and that there were several military-type vehicles around the house. Burk told of her daughter, Cherri Rankin, meeting Pete Silas also. Rankin identified Pete Silas to be defendan Schlax from a photostat of his picture on his driver's license.

An interview with Jo Anne Allen corroborated other information concerning the involvement of Nykile, Wilson, and

Pettegrew in the manufacture and sale of amphetamines.

The date of the explosion of Nykiel's laboratory was correctly fixed as July 24, 1976, instead of August 24.

After relating the information obtained through the arrest of Benjamin, Bryan told of executing search warrant No. 2085(a) and catching Schreiner at the Cajon Blvd. property operating a pill press and producing amphetamine tablets in The hundreds of thousands. At Pettegrew's residence on Eleventh St., Bloomington, several thousand amphetamine tablets were seized. At Locust St. documents implicating Wilson were seized and a phone call from Jerry Keith Martin was intercepted which led to Martin's arrest and ultimate cooperation with the police. At the time of Martin's arrest, he had a pill press in his van. Among others, Martin further implicated Wilson and "Pete." "Pete" was to purchase

the pill press for $10,000. Martin was apprehended in the process of delivering it.

Return on a search warrant served on the Pacific Telephone Co. revealed many calls to and from Schlax' Avalon address and other locations involving Wilson and Nykiel.

An employee of L.A. Chemical Co. identified Nykiel and Schlax as purchasers of chemicals during the first half of 1976.

Inspection of the Avalon address in Riverside revealed one house atop a hill, surrounded by a six-foot high chain link fence. Schlax was observed working in the back yard where a number of "military-type vehicles" were parked.

III

The defendants now appealing joined in each other's motions to suppress evidence and traverse the above search warrants,

as well as the search warrant issued to secure records of the Pacific Telephone Co. The trial court granted defendants' motion to suppress relating to the dwelling at Eleventh St. in Bloomington (Pettegrew's) and the house on Locust St. in Fontana (Wilson's). The court further ordered suppressed the phone call intercepted by the police at Locust St., since it had held that the entry was without probable cause and unlawful.

After six days of testimony and argument, the court denied defendants' remaining motions. These matters are now to be addressed.

IV

The defendants contend that the information in the affidavits for search warrants, supra, obtained from Benjamin should be suppressed because of lack of probable cause in his detention, search, and arrest. Benjamin's statements to the Police precipitated the issuance

of search warrants for Locust St., Seventh St., Eleventh St. and Cajon Blvd.

On October 6, 1976, at approximately 11 p.m., Colton Officer Lupear was on patrol in a marked police unit. He saw a parked car in front of a closed gas station with lights out and only the driver in the car. There were another gas station and two motels some distance down the street. Lupear knew of recent burglaries at the gas stations and an armed robbery at one of the motels.

Lupear drew his unit alongside the parked car and secured a residence address from the occupant. The occupant also stated he was waiting for a friend who was to come from a motel 200 yards away. The driver appeared nervous and evasive in answering Lupear.

Lupear, after securing the car's license number, proceeded eastward and than circled back. He noticed that the

car's lights came on and it started to proceed westerly. No one else had entered the vehicle.

Maintaining surveillance, Lupear saw the car turn first north into a residential area, then east onto a dead end street. Lupear activated his light as he saw the car make the last turn and, upon making the turn himself, saw the car parked adjacent to a dirt field with its lights out. The car then with lights out, pulled ahead approximately 50 feet. Lupear stopped, ordered the driver out, made a pat-down search for weapons, and (with the driver's consent) briefly searched the car, finding nothing. The driver's California driver's license disclosed Benjamin's name and an address different from that first given to the officer. Benjamin told Lupear that he had had a prior arrest for armed robbery.

Since it was a cold evening and the

window on the passenger's side was down, Lupear suspected that Benjamin had thrown something from the car. A follow-up officer searched the area where Benjamin's car had been and found a bag with a large quantity of amphetamine tablets where the car had first stopped. While the search of the area proceeded, Lupear began citing Benjamin for operating his car without headlights. Lupear testified that the whole procedure from the stop to finding the contraband lasted only a little over five minutes.

Benjamin cooperated with the police and gave them the information related in the affidavits for the search warrants.

The trial court analyzed the testimony concerning Benjamin at some length and properly concluded that the detention, pat-down search and arrest were legal. Lupear had a rational suspicion that Benjamin may have been engaged in a

burglary or robbery. The hour, location, evasive and nervous behavior -- the totality of circumstances -- clearly led Lupear to entertain a rational suspicion that some activity out of the ordinary was taking place and that it was related to crime. (People v. Gale (1973) 9 Cal.3d 788, 798.)

Since Lupear entertained a prudent fear for his safety, particularly before the back-up unit arrived, the pat-down and consensual search of the car were valid. (People v. Mosher (1969) 1 Cal.3d 379, 394.)

The fact that Lupear started to cite Benjamin for driving 50 feet down the street without headlights might have become important if the detention had been prolonged. But a total detention from the stop to the arrest of a little over five minutes was reasonable.

Benjamin expected no privacy regarding

the bag of pills he had thrown into the dirt field through the passenger window.

V

Defendants sought to traverse the warrants because of a statement which Detective Bryan affixed in his own handwriting to the affidavit for No. 2085(a) and included in the typed portion of the affidavit for No. 3003.

Of informant Burk, Bryan printed on page 2 of the affidavit 2085(a) for the benefit of the magistrate, "Affiant attests that the informant is a long time resident of the area, has no past arrest, has knowledge of criminal activity. There is no indication of actual involvement in crimina activity."

Did Bryan intentionally, or recklessly mislead the magistrate with the latter quoted sentence? The first sentence was true, including Burk's knowledge of criminal activity; this knowledge was

amply demonstrated in her statements to Bryan as related in the affidavits. It was equally clear from Bryan's testimony that she was not a citizen informant. Since this was conceded in the trial court, there is no need to detail her involvement in the use and sale of amphetamines, particularly during her long association with Nykiel. Generally, as Bryan testified, her use of amphetamines was sporadic and her assistance to Nykiel in a sale was in transferring $40,000 in cash for him as his trusted friend. Bryan testified that he did not intentionally try to mislead the magistrate -- that he had been up some 23 hours working on the case when he obtained search warrant No. 2085(a) -- that he attempted to phrase the hand-written statement on the affidavit the best he could.

Aside from the statemetns from Burke which Bryan typed in the affidavit and

which clearly indicated that she was something less than the ordinary citizen informant, it is apparent that her reliability was corroborated by the other information, particularly from Benjamin. The trial court ruled that any omission Bryan may have made concerning Burk's past was not deliberate or reckless. In Morris v. Superior Court (1976) 57 Cal. App.3d 52, the court found "inescapably" that the officer hid his mistrust of an informant by deliberately attempting to manufacture reliability and intentionall concealing facts. This, of course, substantially interfered with the magistrate's decision-making process. In the case at bench, the trial court considered the affidavit with the additional information which he had about Burk and found that her reliability was sufficiently corroborated. At most, Bryan's omission was a reasonable error not made in bad faith. Burk's

statements need not be excised. (Theodor v. Superior Court (1972) 8 Cal.3d 77, 97.)

An analysis of the information Bryan had through Burk and Benjamin clearly met the legal requirements of corroboration to establish reliability. (People v. Lara (1967) 67 Cal.2d 365, 374-375; Aguilar v. Texas (1964) 378 U.S. 108.)

VI

Defendants attack the search warrants because of the hearsay statements therein. They further contend that some statements constitute multiple hearsay. These objections particularly are aimed at Burk's statements to Bryan of things Nykiel told her and Benjamin's conversations with Schreiner. As to the latter, it should be recalled that some of the Benjamin-Schreiner talks were recorded by the police.

Hearsay statements must be specific and factual. There must be a sufficient

showing that the incriminating facts from the informer were gained through personal knowledge, not rumor. Further, hearsay on hearsay is not to be totally disregarded; it can be used as a part of the total picture. A common sense approach, not a hypertechnical one, is to be used in reading affidavits for search warrants. (People v. Nadell (1972) 23 Cal. App.3d 746, 753, 755.)

The hearsay statements in the affidavits for search warrants met those standards.

VII

Defendants contend that the pill press and the information obtained from Jerry Martin must be suppressed since his arrest and subsequent cooperation with law enforcement was the fruit of the poisoned tree -- the unlawful entry of the Locust St. residence and the unlawful interception of incoming phone calls.

At approximately 6 p.m. on October 7

(the hour when all of the intial warrants were served), the police complied with Penal Code section 1531 in entering the Locust St. residence. Among other incoming phone calls answered inside by the police (without revealing their identity) was one from Jerry Martin -- known to the police from previous contacts. Martin mentioned a deal that was suppose to occur with Johnny and Pete. Pretending to be an associate of Jonny and Pete, an officer obtained Martin's phone number from him. After leaving Locust St., the officers used the number to call Martin and arrange a meeting. At the meeting, the police discovered a large pill press in Martin's van. Following Martin's arrest and his obtaining counsel, he cooperated with the police. Defendant Schlax asserts that Martin's information, as it supports the search warrant No. 3003 on Avalon in Riverside, invalidates that search.

According to Wong Sun v. United States (1963) 371 U.S. 471, 487, the doctrine of the fruit of the poisoned tree may be avoided by a showing either that the evidence would have been acquired by independent means, or that the connection between the illegal search and the after acquired evidence was so attenuated so as to dissipate the taint.

Officer English, who overheard the telephone conversaton with Martin on the phone at Locust St., had known Martin a long time, recognized his voice, but had nothing immediately pressing about which to contact Martin. The trial court characterized English's concern about Martin as having "nothing on the front burner right at that particular moment." Further the trial court refused to "speculate" that English would have gotten Martin involved in the conspiracy case without the phone call, but found

that Martin's involvement was "attentuated to the point where it is admissible." The arrest, search and statements relating to Martin were "triggered by the phone call, not totally based on the phone call." It should be noted that Martin's cooperation with the police occurred some two weeks after his arrest, after he was represented by counsel and thereafter became a prosecution witness.

As the trial court pointed out, this presents a case in which the officers acted without fault. They obtained a search warrant, valid on its face, from a magistrate who passed on the affiant's allegations for probable cause; they complied with Penal Code section 1531 in entering the Locust St. residence. Since no one was home, they answered the phone when it rang.

Plaintiff suggests that the trial court could have applied a test of reasonable

probability to see whether the first alternative of Wong Sun -- inevitable acquiring of the evidence by independent means -- applies and come up with the same answer. It is true that the trial court's use of Lockridge v. Superior Court (1970) 3 Cal.3d 166, factually cannot be reconciled completely with this case. In Lockridge an illegally seized gun led to connecting the defendant with a crime, but the courtroom identification of him was held not to be tainted. The purpose of the law was adequately served by suppressing the gun.

People v. Superior Court (Tunch) (1978) 80 Cal. App.3d 665, held that, although the inevitable discovery rule will not be applied to subvert the safeguards of the exclusionary rule, where officers act in good faith the deterrence rationale of the exclusionary rule loses its force. The inevitable discovery rule applies only to

evidence that, with a reasonably strong probability, would have been discovered if the claimed illegality had not occurred. (Id., at pp. 681-682.)

It is well to note that in the case at bench, English testified that he felt he had enough information on Martin to establish probable cause to arrest him. The phone call had meaning only because of prior legally obtained evidence.

It makes as much sense to consider the good faith of the police in applying "attenuations" as "inevitable discovery."

The "but for" rule of causation is not the only answer to a "taint" case. There must be such connection between the two transactions that they cannot be treated separately. If the earlier illegality" . . . at worst . . . merely contributed to such discovery, the exclusionary rule does not apply." (People v. Eastmon (1976) 61 Cal. App.3d 646, 653.)

The intervening independent acts of Martin making the phone call and meeting the police with the pill press are acts distinguishable from the initial illegality -- the unlawful entry on Locust St. Furthermore, the court's finding of attenuation is supported by the course of events following Martin's apprehension -- his ultimate decision with advice of counsel to become a state's witness.

VIII

In addition to other attacks on search warrant No. 2085(a) as it relates to the laboratory on Cajon Blvd., defendants contend that the warrant was invalid for lack of specificity because three buildings or dwelling units were involved and because the police failed to comply with Penal Code section 1531 in entering the premises.

At 6 p.m. on October 7, 1976, the police located themselves outside the three units consisting of a house and a

duplex-like building. The officers announced that they were from the sheriff's office and had a search warrant. After waiting 30 to 45 seconds with no response, simultaneous forcible entries were made. Inside one of the duplex-like units Schreiner was noisily operating a pill press turning out thousands of amphetamine tablets. Apparently he had not been watching a closed circuit TV monitoring system set up to cover the front gate.

The affidavit for search warrant 2085(a) describes an out building and two adjacent dwellings, one empty and the other used as the clandestine lab. The information regarding occupancy came from Schreiner to Benjamin to the police. Detailed descriptions came after police surveillance.

It is clear that the affidavit expressed probable cause to believe that contraband was in one of the buildings. An inference could also be made that two of the locations

were probably empty. The affidavit may be used to clarify any ambiguity in the description in the warrant. (People v. Grossman (1971) 19 Cal. App.3d 8, 12.)

In People v. Coulan (1969) 273 Cal. App.2d 148, a search warrant was issued for all buildings on a ranch including "persons in residence" for narcotics. The allegation in that case was that the occupants were engaged in a communal type of living. The court said that the affidavit must be tested in a common sense and realistic manner, especially since it is normally drafted by non-lawyers (in the case at bench, Bryan) in the pursuit of a criminal investigation. (Id., at p. 153.)

For all practical purposes, at Cajon Blvd. there was but one location with three buildings surrounded by one fence. One of the three contained contraband. In view of the allegations in the affidavit,

the place to be searched was adequately described.

Unreasonable delay in responding to the officers who have announced their identity and purpose is equivalent to a refusal of admittance. In People v. Abdon (1972) 30 Cal. App.3d 972, five or six seconds were not enough. In People v. Elder (1976) 63 Cal. App.3d 731, the court held that the passage of 20 seconds (". . . not a flash of time . . .") suggests that no one is going to answer. Thirty to fortyfive seconds surely pass muster under Penal Code section 1531. The officers were justified in making forcible entries.

IX

Defendants, especially Schlax, contend that search warrant No. 3003 served on the Avalon St. address in Riverside did not properly describe the place to be searched and that the officers did not comply with Penal Code sections

844 and 1531 in entering the premises to serve the search and arrest warrants. They also contend that the search warrant No. 3003 is invalid because the affidavit contained material which the trial court ordered suppressed from Locust St. and Eleventh St.

Bryan testified that prior to going to the Avalon address, he was aware that a woman and possibly Wilson might be there in addition to Schlax. Bryan knew of Schlax' arrest record, including an arrest for assault with a deadly weapon. He further had information that Schlax had six registered firearms and information from Burk that Schlax had a large amount of ammunition and weapons -- even possibly land mines.

Approximately 15 officers gathered to serve the warrants. Bryan approached the front gate as the woman (Linda Schlax) entered with her children. She locked the gate from the inside and told Bryan she

would inform her husband that Bryan invited him to come out and talk to Bryan. After she drove up the hill and entered the house, the officers entered and drove up the hill. Three is a conflict in testimony betwen Linda Schlax and the officers concerning the occurrences at the house. Apparently Mr. Schlax was busy corralling his dogs (Doberman Pinchers) to keep them from being shot. The trial court adopted the version of Officer Koleszar, who told of attempting to keep Mrs. Schlax outside for the reading of the search warrant. This included an entry to escort her back into the yard during the reading. Also, a brief entry of the premises was made to insure that Wilson was not present. The entry and search occurred after the search warrant was read to Mr. and Mrs. Schlax outside the house.

It is clear from reading the affidavit that the results of the suppressed

searches at Locust St. and Eleventh St. can readily be excised and the remaining material is sufficient for probable cause, (People v. Cook (1978) 22 Cal.3d 67, 94.)

It would have been ridiculous for Bryan and his cohorts to attempt to shout the requirements of Penal Code sections 844 and 1531 from the front to the house on top of the hill over 100 yards away. Their compliance with those sections before searching the house was sufficient. Officer Koleszar's description of what occurred at the house, as adopted by the trial court, showed substantial, good faith compliance with Penal Code sections 844 and 1531.

In measuring the legality of the officers' actions, it should be remembered that they not only had a search warrant, but also arrest warrants for Schlax and Wilson.

X

On November 4, 1976, Detective Bryan obtained a search warrant to secure records of toll calls relating to certain telephone numbers from the Pacific Telephone Co. The numbers were those relating to Eleventh St., Locust St., Seventh St., a residence rented by Wilson on Tamirand St., and Schlax' residence on Avalon.

In addition to the information of Bryan, the affidavit includes information obtained from Benjamin and Martin as well as the results of the service of search warrant No. 2085(a).

Again, excision of the materials suppressed by the trial court (People v. Cook, supra, 22 Cal.3d 67) plus the application of the inevitable discovery rule (Wong Sun v. United States, supra, 371 U.S. 471) clearly shows that the toll call records were legally obtained. By use of the street numbers and a criss-cross directory, all of the phone numbers would have been easily

obtained.

XI

Defendant Schlax, early in the proceeding, filed a motion to suppress the identifications of him from photographs (as disclosed in the affidavits for search warrants) as being impermissibly suggestive and contrary to due process. There is no citation in his brief, or the plaintiff's, to any place in the clerk's or reporter's transcript where the trial court ruled on this motion. The following comments assume that the motion was denied.

Following Schlax' plea of guilty, no certificate of probable was obtained. (Penal Code, § 1237.5.) His appeal was taken under Penal Code section 1538.5(m). (See also Cal. Rules of Court, rule 31(d).)

It appears that Schlax' motion deals with possible incourt identification as a matter of due process. To that extent, as in the assessment of the voluntariness

of an admission or confession, the trial court's ruling is not properly before this court. To the extent that defendant relates identification procedures to search and seizure questions and to the extent that the trial court passed on such procedures and questions based solely on the affidavits, the trial court's denial of the motion is amply supported. (See People v. DeVaughn (1977) 18 Cal.3d 889, 896-897.)

The judgments of convictions are affirmed.

/s/ KNEELAND
J.*

/s/ GARDNER
P.J.

/s/ MORRIS
J.

* Assigned by the Chairperson of the Judicial Council

Court of Appeal, Fourth Appellate District
State of California

FILED
SAN BERNARDINO COUNTY
1979 JUN 6 PM 4 31
V. DENNIS WARDLE
COUNTY CLERK
BY DEPUTY

DIVISION TWO

4 CRIM No. 9885

REMITTITUR

PEOPLE
Plaintiff and Respondent

VS.

JOHN LOUIS WILSON ET AL
Defendants and Appellants

F. 1575

SUPERIOR COURT No. CR34012

COUNTY OF SAN BERNARDINO

I, ROBERT L. FORD, *Clerk of the Court of Appeal, Fourth Appellate District, State of California, certify the attached is a true and correct copy of the original opinion or decision entered in the above entitled cause on* March 20, 1979 *and this opinion or decision has now become final.*

Witness my hand and seal of the Court this 4th day of June 1979

ROBERT L. FORD, *Clerk*

ENTERED ON ACIS By SL
6-11-79

By _____ *Deputy*

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APPENDIX B
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APPENDIX C

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No._____

JOHN LOUIS WILSON, DUDE PETTEGREW, Petitioners, -vs- THE PEOPLE OF THE STATE OF CALIFORNIA, BY THEIR ATTORNEY, GEORGE DUEKMEJIAN, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Respondent.	AFFIDAVIT OF DAVID WHITNEY IN SUPPORT OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

I, DAVID WHITNEY, DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING AVERMENTS ARE TRUE AND CORRECT:

(1) I am an attoney at law, duly licensed to practice before the Supreme Court of the State of California,

(2) In June of 1977, I was retained by Petitioner Dude Pettegrew to represent him in the trial of the charges pending against him following his indictment thereon;

(3) I continued to represent petitioner Dude Pettegrew throughout all stages of the trial court proceedings including March 10, 1978, at which time petitioner's application for probation was denied and on or about March 16, 1978 petitioner was committed to state prison and granted bail on appeal.

(4) On or about March 16, 1978, as a courtesy to petitioners Dude Pettegrew and John Wilson, I filed notices of appeal on behalf of said petitioners, with the understanding that they were to obtain separate counsel to represent them on appeal since I do not handle appellate matters.

(5) On or about July 6, 1978 attorney Richard Walton filed a substitution of attorneys with the 4th District Court of Appeal, relieving me as counsel of record for said petitioners. At no time did I

accept responsibility for, or participate in the preparation of said appeal.

(6) On intermittant occasions during the proceeding months I was contacted by petitioners Dude Pettegrew and John Wilson, inquiring what progress was being made on their appeals. They each stated to me that they had made numerous attempts to obtain such information by telephonic contact with Mr. Walton's office, but they had not be able to speak with him. They stated that on each such occasion, they left messages with Mr. Walton's office requesting that he contact them, but that he never did so. They requested that I attempt to communicate with Mr. Walton for the purpose of obtaining information about the progress of the appeal, because they had been unable to do so.

(7) On various occasions I placed approximately seven telephone calls to Mr. Walton, both at his office and home telephone numbers. He was unavailable on each such occasion, and although I repeatedly left

messages with his secretary and family members, he never returned my calls. Further, I spoke with his associate, Attorney John Meyers, and expressed my disappointment at the failure of Mr. Walton to communicate with me in anyway. I requested that Mr. Meyers relay my message personally to Mr. Walton and was informed that he would do so.

(8) Approximately July of 1979, I received information from attorney Ron Minkin who represented co-defendant Sylvas Schlax, that the petitioner's appeal had been denied by the 4th District Court of Appeal, and further, that the California Supreme Court had denied a Petition for Writ of Certiorari for all said petitioners, and that he had prepared a Petition for Writ of Certiorari with this Honorable Court. I requested that he send to me a copy of the remittitur indicating a denial of said appeal forthwith, to which request he has never

complied.

(9) Immediately after this information was received from attorney Ron Minkin, I notified petitioners Dude Pettegrew and John Wilson of said information. They requested that I recommend other counsel to represent them for further appellate proceedings because of dissatisfaction with Mr. Walton. I recommended attorney Wallace B. Farrell. Mr. Farrell subsequently was retained by said petitioners and agreed to represent them at such time as he received notice of the filing of said remittitur.

(10) Mr. Farrell informed me that he perused the file on said petitioners at the Clerk's office of the San Bernardino Superior Court and did not find therein Notice of the Remittitur having been filed.

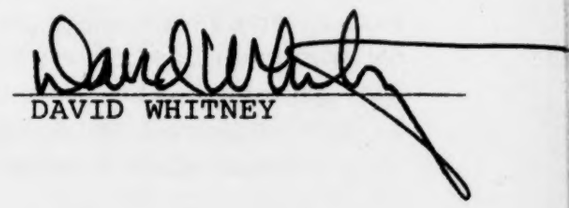
(11) Finally, on or about September 20, 1979, he informed me that he had ascertained that said remittitur had been received and filed, and immediately undertook preparation of the Petition for Writ of Certiorari to which this

affidavit has been incorporated as Appendix C.

(12) Based upon the aforementioned facts, I believe that there is good cause for this Honorable Court to accept and consider said Petition for Writ of Certiorari.

WHEREFORE, you affiant respectfully requests acceptance for filing of the Petition for Writ of Certiorari and that an extension of time be granted within which to file and consider said Petition without consideration whether this application for extension of time and Petition for said writ were filed in a timely and proper fashion.

Dated: 10/29/79 Respectfully submitted,



DAVID WHITNEY

APPENDIX D, E, F, and G

IN THE MUNICIPAL COURT DISTRICT,
DIVISION COUNTY OF
SAN BERNARDINO, STATE OF CALIFORNIA

STATE OF CALIFORNIA)		**A F F I D A V I T**
COUNTY OF	) ss.	**IN SUPPORT OF**
SAN BERNARDINO	)	**SEARCH WARRANT**

Personally appeared before me this 7th day of October, 1976.

James M. Bryan, Detective

WHO on oath, makes complaint and deposes and says: that he is now and has been for the last eight years, a duly authorized Deputy Sheriff of the County of San Bernardino, State of California, assigned to the narcotics division for the past 4 years to investigate as an investigator in the narcotics division, he has specialized in the investigation of major conspiracy violations in the field of narcotics.

Premises to be Searched

1. The premise located at 8587 Locust Street in Fontana, County of San Bernardino, State of California. Premise further described as being a yellow woodframe dwelling with white trim having a gray composition shingle roof. Dwelling further described as being located on the east side of Locust, facing west, having a detached garage on the northeast corner of the property. Dwelling further described as having the common numbers 8587 next to the front door of the dwelling.
2. The premise located at 1153 Seventh Street, Colton, County of San Bernardino, State of California.

Premise further described as being a white stucco dwelling with green trim on windows. Dwelling further described as having a brown composition roof with a detached garage located on the south side of the dwelling.

3. The premise located at 18569 Eleventh Street, Bloomington, County of San Bernardino, State of California. Dwelling further described as being yellow stucco with brown wooden trim. Premise further described as having an attached garage on the west side of the dwelling, being yellow stucco with brown trim. Dwelling further described as having the common number of 18569 located on the garage trim.

4. The premise located southwest of Cajon Boulevard approximately 1-6/10 mile of the intersection of Kenwood Avenue and Cajon Boulevard. Premise further described as having two dwellings and one out-building located on the property. Dwelling number one further described as a one-story woodframe, beige stucco with dark brown wooden trim, further described as having faded green asphalt composition roof. Second dwelling located west and adjacent to dwelling number one, further described as one-story woodframe, being beige stucco having dark brown wooden trim, also having a faded green asphalt composition roof. Dwelling number two further described as having what appeared to be a new addition on the rear of southmost portion of the dwelling. The third building described as being a one-story woodframe having an off-white stucco siding with a gray asphalt composition roof.

Property to be Seized

1. Personal correspondence between the persons named in the affidavit.

2. Personal phone books showing phone numbers, addresses and names of persons named in the affidavit.

3. Documents with computations indicatives of narcotics transactions.

4. The materials used for the purpose of manufacturing and/or selling and packaging amphetamines.

Factual Information

Affiant, James M. Bryan, attests that affiant has read all investigative reports, interviewed all witnesses and informants and contacted all investigating officers, prior to preparation of the information contained within this affidavit.

Affiant attests that the affiant has received investigative reports indicating that on August 24, 1976, that an explosion and fire took place at 8668 Almond Avenue in Fontana and that a Frank John NYKEIL was involved in the explosion and fire and subsequently lost his life resulting from injuries received.

Investigative reports indicate that numerous items of paraphernalia, including chemicals, cooking materials, test tubes, chemical formulas and books on chemistry were located at the residence of 8668 Almond Avenue, Fontana, after the explosion and fire.

Affiant also attests that reports indicate that the San Bernardino Sheriff's Crime Lab gathered evidence at the scene of the fire and explosion and an opinion formed by Criminalist John Davison after examination of all the evidence indicates that the chemicals and equipment located at this particular residence were in fact significant and necessary items in the manufacturing of amphetamine powder.

Affiant also attests that investigative reports indicate statements were made at the hospital emergency room by Frank John NYKEIL on August 24, 1976 prior to his death to the hospital personnel questioning them, "if he was going to be arrested". Affiant attests that these reports indicate that this question was asked by Frank John NYKEIL on a number of occasions to the hospital staff.

Information from Informant

Affiant attests that the latter part of September, 1976 that the affiant has extensively interviewed an informant regarding the explosion and fire that killed Frank John NYKEIL in Fontana on August 24, 1976 and covered in these extensive interviews were also information regarding the associates of Frank John NYKEIL.

Informant states that the informant became aware of Frank John NYKEIL, known to the informant as Bud NYKEIL'S, activities and involvement in the sales of amphetamines in 1972, when the informant observed NYKEIL selling quantities of amphetamines at his residence at 8587 Locust Avenue in Fontana.

Informant states that the informant was at the residence at 8587 Locust, residence of Bud NYKEIL at least three times a week beginning in 1972 through June 1976 and on a number of occasions while at the residence observed Bud NYKEIL selling amphetamines to different people.

Informant also stated that on many occasions has been at the residence of Bud NYKEIL on Locust and saw Bud NYKEIL sell to Dude and Beverly PEDIGREW, quantities of amphetamine tablets.

Informant also states that in February or March of 1976 that the informant was introduced to Johnny

WILSON by Bud NYKEIL and informed by Bud NYKEIL and informed by Bud NYKEIL that Johnny WILSON had just been released from state prison.

Affiant attests that the informant is a long time resident of the area, has no past arrest, has knowledge of criminal activity, there is no indication of actual involvement in criminal activity.

Informant also states that Bud NYKEIL told the informant that Johnny WILSON was his partner in his transactions of selling amphetamines. Informant also states that Bud NYKEIL told the informant that Johnny WILSON had met a chemist while in state prison and that the chemist lived in the Los Angeles area and was now producing amphetamine powder from chemicals supplied by Johnny WILSON and Bud NYKEIL and that the finished product was then returned to Bud NYKEIL and Johnny WILSON and Bud NYKEIL and that the finished product was then returned to Bud NYKEIL and John WILSON to be pressed into pills.

Informant also states that Bud NYKEIL told the informant some type of problem came up between the chemist in Los Angeles and Johnny WILSON and that John WILSON wanted Bud NYKEIL to set up a clandestine lab for the purpose of manufacturing amphetamine powder.

Bud NYKEIL told the informant also that there was going to be four partners in the clandestine lab and that these partners would be one Bud NYKEIL, two Johnny WILSON, three Pete SILAS and four Donald SCHREINER.

Informant states the informant was familiar with all of these subjects and that the informant had seen each one on a number of occasions at the residence of Bud NYKEIL

at 8587 Locust Avenue, starting in 1972 through the latter part of 1976. Informant also states that remembering one occasion where Donald SCHREINER was at the residence at 8587 Locust, Fontana, just prior to January of 1976 before the release of John WILSON from state prison, and on that occasion saw Donald SCHREINER purchase a quantity of amphetamines from Bud NYKEIL.

Informant also stated that approximately March of 1976 that the informant was at the residence of Bud NYKEIL with John WILSON and that Bud NYKEIL had told her that the chemist in L.A. had delivered a gummy substance referred to by Bud NYKEIL as an unfinished amphetamine product which the informant saw being placed on a glass and spread out and then heat lamps over top of the material. Informant states that the informant was told by Bud NYKEIL that the product on the glass was $15,000 worth of amphetamine powder and that he, Bud NYKEIL, and John WILSON were drying the powder out.

Informant also states that on October 5, 1976, that the informant had conversation with a Sharron RIGDON, an associate and friend of Bud NYKEIL, whom the informant has seen on a number of occasions at the residence of Bud NYKEIL and has on a few occasions seen the subject Sharron RIGDON purchase quantities of amphetamines from Bud NYKEIL. Informant states that this Sharron RIGDON told the informant on October 5th that information was that Johnny WILSON went back in business and was producing large quantities of amphetamines.

Seizure of Amphetamines

Affiant attests on this date the affiant contacted Detective Jack Stratton from Colton Police Department

and that Detective Stratton a police officer of the City of Colton, Police Department informed the affiant that a Randall Richard BENJAMIN was arrested on October 6, 1976, by officer LaPeer, police officer for the City of Colton, Police Department for possession for sale of amphetamine tablets.

Detective Stratton informed the affiant that a quantity of 100,000 amphetamine tablets were seized from Randall Richard BENJAMIN and that the suspect BENJAMIN after being arrested was later read his rights per Miranda by Officer LaPeer, police officer, City of Colton.

Affiant was also informed by Detective Jack Stratton that Officer LaPeer received a waiver of these rights from Randall Richard BENJAMIN and an investigative interview was taken regarding the possession of the amphetamine tablets.

Affiant also was informed by Detective Jack Stratton that Randall Richard BENJAMIN had told Detective Donegan and Detective Jack Stratton that he had delivered a different 100,000 tablets to a George B. COWART, the day before his arrest. This delivery took place at 854 W. 8th Street, San Bernardino.

Randall Richard BENJAMIN also informed Detective Donegan and Detective Stratton that he had received the pills from Donald SCHREINER and Donald SCHREINER paid him $400 to make the delivery of the amphetamine tablets.

The affiant was informed by Detective Stratton and Detective Donegan that during the course of the interview with Randall Richard BENJAMIN that BENJAMIN had told them that there was a clandestine laboratory for the purpose of producing amphetamine tablets located

somewhere between San Bernardino and Victorville and that BENJAMIN had been informed of this by Donald SCHREINER.

Affiant was also informed after the interview of Randall BENJAMIN that BENJAMIN agreed to go back to Donald SCHREINER under controlled conditions wearing an electronic listening device and have this conversation between BENJAMIN and SCHREINER taped showing Donald SCHREINER'S knowledge and involvement with the 100,000 tabs.

The affiant was informed by Detective Donegan and Detective Stratton that this conversation did take place under surveillance between BENJAMIN and SCHREINER and that during the course of the conversation SCHREINER told BENJAMIN that the 100,000 pills could be sold and that someone had been bugging Beverly all day. Affiant was also informed that this taped conversation contained statements by Donald SCHREINER to Randall BENJAMIN that that Dude PEDIGREW had been working for 20 straight hours at the lab and that he, Donald SCHREINER, was going to the lab and would not be back until Friday.

Affiant was also informed by Detective Donegan and Detective Stratton that Randall BENJAMIN had told them that he had picked up the 100,000 pills at 1153 Seventh Street, Colton, being the residence of Donald SCHREINER, these being the amphetamines seized by the officers and that the ones picked up and delivered the day before to COWART were also picked up at 1153 Seventh Street in Colton.

Affiant was also informed that surveillance by officers of the residence at 1153 Seventh Street, Colton, showed Donald SCHREINER leaving the residence in

the early morning hours on 10/7/76 and proceeding to 18569 Eleventh Street, Bloomington, the residence of Dude and Beverly PEDIGREW.

Affiant is also informed by officers conducting surveillance that Donald SCHREINER was then surveilled from the 18569 Eleventh Street address to an area approximately 1-6/10 mile west on Cajon Boulevard from the intersection of Kenwood Avenue and Cajon Boulevard.

Affiant also attests that at a later time on 10/7/76 that the affiant observed a gray primer van parked between two residences on Cajon Boulevard, being approximately 1-6/10 miles west of the intersection of Kenwood and Cajon and that the affiant was informed by Detective Donegan that was the vehicle driven by Donald SCHREINER, determined by surveillance.

Affiant was informed by Detective Donegan and Detective Stratton that the subject Randall Richard BENJAMIN had told them that the clandestine lab had been described to him by Donald SCHREINER as being located on a lot where two dwellings were located adjacent to each other and that one was empty and the other one was used as the clandestine lab.

Affiant was also informed by Detective Donegan and Stratton that Randall Richard BENJAMIN told them that Donald SCHREINER had introduced them to a guy named Johnny told by Donald SCHREINER that Johnny was a commercial burglar and that SCHREINER had also mentioned the name of Pete, telling him that that was not his real name but this guy Pete and Johnny were head of the organization.

Affiant was also informed that Randall Richard BENJAMIN had told Donegan and Stratton that Donald

SCHREINER had showed him a picture of a subject and called him Frank John NYKEIL or Bud NYKEIL and told him that Bud is deceased and was killed in an explosion in a clandestine laboratory in Fontana in August of '76. BENJAMIN also indicated to the officers that Bud NYKEIL was also part of the same organization of WILSON and Pete.

Controlled Delivery of Amphetamines

Affiant was informed on October 7, 1976, by Detective English that Randall Richard BENJAMIN told him that a delivery of 100,000 amphetamines was supposed to go to a George B. COWART, these being amphetamines seized when he was arrested. Detective English then informed affiant that a controlled delivery was done using an electronic listening device on a person of BENJAMIN and surveilled by officers of the Sheriff's Department. English also informed the affiant that after the controlled delivery of the amphetamines by BENJAMIN, BENJAMIN was paid $5500 by COWART, COWART was then surveilled to another location where the officers arrested him and seized the amphetamines.

As a narcotics officer for the County of San Bernardino, the affiant has participated in the investigation in excess of six major narcotic conspiracy cases and this officer has found through experience that located within the residences of the suspected co-conspirators, documents evidencing the existence of a conspiracy. Such documents include telephone numbers of co-conspirators, correspondence between co-conspirators, maps showing specific locations and documents containing names of other co-conspirators.

The affiant attests that the above-contained information tends to show that a continuing conspiracy

exists with the persons named in the affidavit to manufacture, distribute and sell amphetamines, a narcotic, in the County of San Bernardino, therefore showing a felony has been committed and is continuing to be committed in the County of San Bernardino, State of California.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Bernardino, California on October 7, 1976.

_____

James M. Bryan

IN THE SUPERIOR COURT, CENTRAL DIVISION
COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

SEARCH WARRANT

(Penal Code 1529)

THE PEOPLE OF THE STATE OF CALIFORNIA: To any Sheriff, Constable, Marshal, Peace Officer, or Policeman in the County of San Bernardino:

Proof, by affidavit, having been this day made before me by James M. Bryan, Deputy Sheriff, County of San Bernardino, State of California, that there is probable cause for believing that: the continuing conspiracy to manufacture and distribute amphetamine tablets in the County of San Bernardino, State of California, is being and has been committed, a felony through the use of certain telephone instruments to wit, 823-9426, 822-0833, 682-8056, 877-4267, 824-3178, and that the Pacific Telephone Company billing records of toll calls and collect calls for these numbers constitute evidence that the above felony is and has been committed and that these records are in the custody and control of Pacific Telephone Company of California, Custodian of Records, located at 1010 Wilshire Boulevard, City of Los Angeles, State of California, zip 90017.

YOU ARE COMMANDED at any time of the day or night to make immediate search of premises of the Custodian of Records, Pacific Telephone Company of California, 1010 Wilshire Boulevard, City of Los Angeles, State of California, zip 90017.

for the following property: the records of toll calls and collect calls from and to the telephone numbers 823-9426, 822-0833, 682-8056, 877-4267, 824-3178.

and if you find the same or any part thereof, to bring it forthwith before me at my courtroom.

GIVEN UNDER MY HAND, and dated: November 4, 1976.

Judge of the Superior Court
Central Division
State of San Bernardino

Patrick J. Morris

Judge of the Superior Court
Central Division
County of San Bernardino
State of California

IN THE SUPERIOR COURT DISTRICT,
CENTRAL DIVISION
COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF) ss.
SAN BERNARDINO)

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Personally appeared before me this 4th day of November, 1976, James M. Bryan, San Bernardino Sheriff's Office, San Bernardino County, WHO on oath, makes complaint and deposes and says: That he has been assigned to the Narcotics Division of the San Bernardino County Sheriff's Office for the past four years and has been involved in numerous narcotic investigations. Affiant also attests that in the last two years, affiant has been assigned as investigator in the Narcotic Division and has specialized in the investigation of major conspiracies and violations in the field of narcotics.

Information contained in this affidavit is for the purpose of securing phone toll information from the following listed phone numbers, this information tends to show an on-going and continuing conspiracy in the County of San Bernardino, State of California, for the purpose of manufacturing and distributing methamphetamines.

PREMISES TO BE SEARCHED

Pacific Telephone Company of California, address of 1010 Wilshire Boulevard, Los Angeles, California 90017.

INFORMATION

The purpose of securing this search warrant is to obtain long distance calls and phone calls from the

following phone numbers to show an on-going continuing conspiracy to sell and manufacture methamphetamine in the County of San Bernardino in the State of California.

1. (714) 822-0833.
2. (714) 823-9426.
3. (714) 877-4267.
4. (714) 824-3178.
5. (714) 682-8056.

FACTUAL INFORMATION

The affiant, James M. Bryan, attests that the affiant has read all investigative reports, interviewed all witnesses and informants, contacted all investigating officers prior to the preparation of the information conctained within this affidavit.

WITNESS #1

(Hereinafter referred to as Witness #1)

Witness #1 indicated this witness has, on numerous occasions between 1972 and 1976, been at the residence 8587 Locust Street in Fontana, and has observed FRANK JOHN NYKIEL sell quantities of amphetamines to persons known to this witness. Witness #1 also indicated that the witness has been in the residence with FRANK JOHN NYKIEL and observed FRANK JOHN NYKIEL package for sale a white powder substance in plastic baggies, NYKIEL indicating to the witness that this was "Crank" (methamphetamine).

Affiant can attest that on August 24, 1976, FRANK JOHN NYKIEL was injured in an explosion and fire at a residence 8668 Almond Street, Fontana, and that FRANK JOHN NYKIEL died as a result of these injuries. Affiant can also attest investigative reports received from San

Bernardino County Sheriff's investigators and the San Bernardino County Sheriff's Crime Lab indicate that FRANK JOHN NYKIEL was operating a clandestine laboratory for the purpose of producing methamphetamine powder, a substance needed for the preparation and manufacturing of amphetamine tablets.

Witness #1 also indicates that this witness on a number of occasions has been at 8587 Locust Street in Fontana in 1976, and observed JOHN LEWIS WILSON to sell and receive money for quantities of amphetamine tablets.

Affiant can also attest that on October 7, 1976, that a search warrant was served on a residence at 8587 Locust Street, telephone number 823-9426. As a result of that search warrant, a substance identified as methamphetamine by the San Bernardino County Crime Lab was removed from that residence. This substance the methamphetamine, being a necessary percursor for methamphetamine tablets.

Witness #1 also indicated that JOHN LEWIS WILSON was living on Tamirand Street in north Fontana during a time period of approximately June and July of 1976, with a female by the name of LORRETTA JOHNSON.

Affiant can attest that the affiant observed rental receipts with the signature of JOHN LEWIS WILSON on these receipts for a residence at 7603 Tamirand Street, Fontana, California, for the periods of June and July, 1976.

Affiant can also attest that phone tolls on telephone number 822-0833 were received from Federal authorities in Los Angeles pursuant to Federal Administrative Subpoena indicating the time period of July 1976, and

that numerous telephone calls were made to a toll number of 682-8056, phone belonging to a residence 3403 Avalon, Riverside, California, subject's last name SCHLAX, SYLVAS JOHN, an identified co-conspirator in the manufacturing and selling of methamphetamine tablets.

Witness #1 also indicated that FRANK JOHN NYKIEL told this witness in approximately May of 1976, that he, FRANK JOHN NYKIEL, and JOHN LEWIS WILSON, and a PETE SILAS, and a DONALD SCHREINER were all partners in an organization whose purpose was to manufacture "crank" (methamphetamine).

Witness #1 also indicated that information was that PETE SILAS was not the subject's real name, and this subject was the money man in the operation and that he lived in the Riverside area in a large house sitting up on a hill and had a number of military type vehicles at the residence and also had large Doberman Pinscher dogs at the residence.

Affiant can attest that subscriber information on telephone number 862-8056 indicates the telephone number comes back to residence 3403 Avalon in Riverside to a SCHLAX, SYLVAS JOHN. Also the affiant can attest that Detective D'Amico observed subject SYLVAS SCHLAX at the residence 3403 Avalon, indicating that the residence was located on a hill and that there was military type vehicles on the property.

Affiant can also attest that on showing witness #1 a photograph of SYLVAS SCHLAX, that witness #1 tentatively identified the subject in this photograph as PETE SILAS. Affiant also attest that a sibling of witness #1 on observing PETE SILAS on several occasions, positively identified the photograph as PETE SILAS.

Witness #1 also indicated that on a number of occasions, the witness observed DUDE and BEVERLY PETTEGREW purchase from FRANK JOHN NYKIEL and JOHN WILSON quantities of amphetamines at the residence 8587 Locust Street in Fontana.

Affiant will attest that on October 7, 1976, a search warrant was served at the residence of 18569 11th Street in Bloomington, residence of DUDE and BEVERLY PETTEGREW, telephone number 877-4267, and as a result of that search warrant, a quantity of amphetamine tablets were seized.

Witness #1 also indicates that in 1976 on several occasions, witness observed a subject known as DONALD SCHREINER purchase amphetamine tablets from FRANK JOHN NYKIEL and JOHN WILSON at the residence of 8587 Locust Street in Fontana.

Affiant will also attest that on October 7, 1976, a search warrant was served on a parcel of property in the Devore area. As a result of that search warrant, a pill press was seized while in the process of producing amphetamine tablets. A large quantity of amphetamine tablets, approximately 200,000, were seized from that location and a quantity of prepared methamphetamine powder was also seized. Affiant also attests that DONALD SCHREINER was arrested at that location while manufacturing amphetamines.

WITNESS #2

(Hereinafter referred to as Witness #2)

Witness #2 will indicate that on October 6, 1976, the witness received from DONALD SCHREINER at SCHREINER'S residence 1153 Seventh Street in Colton, telephone number 824-3178, approximately 100,000

amphetamine tablets to be delivered to a GEORGE COWART and received from GEORGE COWART fifty-five hundred dollars for the purchase of amphetamine tablets.

Affiant will attest that on October 6, 1976, witness #2 was arrested in possession of 100,000 amphetamine tablets. Affiant also attests that the witness, under direction of the San Bernardino County Sheriff's Narcotics, made a taped telephone call to 824-3178, talking to DONALD SCHREINER reference a narcotic transaction.

Affiant also attests that from information received from witness #2 that a pill press and a large quantity of amphetamines were located in the Devore area and that DONALD SCHREINER was arrested at that location in the process of manufacturing amphetamine tablets.

WITNESS #3

(hereinafter referred to as witness #3).

Witness #3 states that this witness was involved in a transaction of selling a pill press to a JOHN WILSON and PETE SILAS, and that on October 6, 1976, this witness talked to JOHN WILSON calling him at telephone number 823-9426, and that on October 7, received a call from PETE SILAS after he left a message at the 877-4267 number.

Witness #3 will also indicate that witness was given two phone numbers by JOHN WILSON in which he (WILSON) could be contacted, these numbers being 823-9426 and 877-4267.

Affiant will attest that on October 7, 1976, search warrants served at the residence of 8587 Locust in Fontana

indicated the phone number located at that residence to be 823-9426.

Affiant will also attest that a search warrant served at the residence of 18569 11th Street indicates telephone number at that location to be 877-4267.

In the affiant's opinion as a result of this on-going investigation, there is probable cause to believe that there is a continuing conspiracy to manufacture and distribute amphetamine tablets through the use of telephone instruments at the following numbers: (714) 823-9426, (714) 822-0833, (714) 682-8056, (714) 877-4267, (714) 824-3178, and that the billing records of these numbers constitutes evidence of the aforementioned felony being committed.

Affiant prays that a search warrant be issued to search the premises located at 1010 Wilshire Boulevard, City of Los Angeles, State of California, zip 90017, this being the Pacific Telephone Company of California, where all billing records of telephone numbers mentioned above are located.

And this complainant prays that a search warrant may be issued to search for the same, and that the same may be brought before a magistrate and disposed of according to law.

James M. Bryan

_____

_____

Subscribed and sworn to before me this 4th day of Nov., 1976.

Patrick J. Morris

Judge of the Superior Court
District, Central Division
County of San Bernardino
State of California

RECEIPT FOR PROPERTY TAKEN UNDER SEARCH WARRANT

The following personal property was taken from Pacific Telephone Co. 1010 Wilshire Blvd., L.A., County of Los Angeles, State of California, by virtue of a search warrant dated the 4th day of Nov., 1976, and executed by Pat Morris Judge of the Superior Court of San Bernardino Judicial District, County of San Bernardino, State of California.

ITEMS TAKEN

1. One manila envelope containing phone tolls for numbers:

714 877-4267 May-Oct
714 824-3178 May-Oct
714 822-0833 Mar-Aug
714 823-9426 May-Oct
714 682-8056 May-Oct

(6) months on each number.

A copy of said receipt was delivered to Terry Reid (or posted at the aforementioned residence) prior to said officer's leaving the premises.

Robert F. Higgins
Officer

Witness

The below signed acknowledges receipt of a copy of the inventory made by searching officer relating to property seized under the aforesaid search warrant.

Terry Reid
Name

Pacific Telephone
Address

SUPERIOR IN THE JUDICIAL DIVISION COURT DISTRICT, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
RETURN TO SEARCH WARRANT

The following personal property was taken from Pacific Telephone Company 1010 Wilshire Blvd. LA, by virtue of a search warrant dated this 4th day of November 1976, and executed by Judge Pat Morris of the Superior Court of San Bernardino Judicial District.

1. One manila envelope containing phone tolls for numbers:

714/877-4267 May-October
714/824-3178 May-October
714/822-0833 March-August
714/823-9426 May-October
714/682-8056 May-October
6 months on each number

I, Robert Higgins by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me under the warrant.

All of the property taken by virtue of said warrant Will be retained in my custody subject to the order of this court or of any other court in which the offense in respect to which the property or things taken, is triable.

Robert F. Higgins

Subscribed and sworn to before me this 12 day of November, 1976.

Patrick J. Morris
Judge of the Superior Court Division
County of San Bernardino, State of Calif.

IN THE SUPERIOR COURT, CENTRAL DIVISION
COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

SEARCH WARRANT
(Penal Code 1529)

THE PEOPLE OF THE STATE OF CALIFORNIA: To any Sheriff, Constable, Marshal, Peace Officer, or Policeman in the County of San Bernardino:

Two (2) paragraphs of this document are illegible here.

YOU ARE COMMANDED at any time of the day or night to make immediate search of premises of the Custodian of Records, Pacific Telephone Company of California, 1010 Wilshire Boulevard, City of Los Angeles, State of California, zip 90017.

for the following property: the records of toll calls and collect calls from and to the telephone numbers 823-9426, 822-0833, 682-8056, 877-4267, 824-3178.

and if you find the same or any part thereof, to bring it forthwith before me at my courtroom.

GIVEN UNDER MY HAND, and dated: November 4, 1976.

Patrick J. Morris

Judge of the Superior Court
Central Division
County of San Bernardino
State of California

IN THE SUPERIOR COURT DISTRICT,
CENTRAL DIVISION
STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

STATE OF CALIFORNIA)
COUNTY OF) ss.
SAN BERNARDINO)

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Personally appeared before me this 16th day of November 1976 James M. Bryan WHO on oath, makes complaint and deposes and says: that he has now been assigned to the Narcotics Division of the San Bernardino County Sheriff's Office for the past four years to investigate the illicit trafficking of narcotics in the San Bernardino County. Affiant also attests that he is now assigned to a special investigations unit within the Narcotics Division, the primary function being to investigate major conspiracies and the trafficking of narcotics, and has for the last two years specialized in this type of investigation.

The information contained in this affidavit is that for the purpose of securing a search warrant on the premises at 3403 Avalon, Riverside, County of Riverside, State of California, for evidence, showing on-going and continuing conspiracy in the County of San Bernardino and the County of Riverside, State of California, for the purpose of manufacturing and distributing methamphetamine.

INTERVIEW: WITNESS RUTH BURK

Affiant will attest that on September 30, 1976, that he interviewed the witness Ruth BURK regarding the activities of the subject Frank John NYKIEL and his associates. Affiant will further attest that the witness Ruth BURK is a long time resident of the area, has no past

arrest record, apparently has knowledge of criminal activity, however, there is no indication of actual involvement in criminal activity.

Affiant will attest that the witness Ruth BURK told him that she has been acquainted with the subject known to her as Bud NYKIEL since 1972, and spent a considerable amount of time at the residence of Bud NYKIEL, located at 8587 Locust Street in the Fontana area. She further stated that this was particularly true in the period of time between February of 1976, and July of 1976, stating that she would be at the residence of Bud NYKIEL on Locust Street three or four days each week.

The witness Ruth BURK further stated to the affiant that in February of 1976, she was introduced to a subject John WILSON by Bud NYKIEL and was told by NYKIEL that John WILSON was his partner in the illegal trafficking of drugs and/or narcotics.

The witness Ruth BURK also told your affiant that while present at the residence at 8587 Locust Street, she has observed Bud NYKIEL and John WILSON making numerous sales of amphetamines to a large number of people, which included but not limited to the following subjects: Richard LUNSFORD, Celia CARNES, Dude and Beverly PETTEGREW, and Sherry RIGDON. The witness Ruth BURK also stated that she has heard conversation between Bud NYKIEL and John WILSON regarding the sales of drugs and had heard both subjects talking on the telephone at the 8587 Locust Street address; and the conversation on the telephone in her opinion was regarding the sale of drugs.

Witness Ruth BURK also told your affiant that she has met and seen a subject known to her as Donald SCHREINER at the 8587 Locust Street address and has

overheard conversation between him and Bud NYKIEL and John WILSON regarding the subject SCHREINER picking up a quantity of amphetamines.

Witness Ruth BURK further stated to your affiant that in the early part of 1976, that she observed a quantity of a yellow powdery substance drying under heat lamps at the 8587 Locust Street address in Fontana and was told by Bud NYKIEL at that time that it was a very good quality of methamphetamine. The witness Ruth BURK further stated to your affiant that she met a white male adult subject, introduced to her as Pete SILAS at the 8587 Locust Street address, the residence of Bud NYKIEL. She believes that this was possibly in May of 1976, and further stated that after being introduced to the subject Pete SILAS that she was told by Bud NYKIEL that he (NYKIEL) was involved in the manufacturing and sale of methamphetamine and that his partners in the operation were Johnny WILSON, Pete SILAS, and Donald SCHREINER, and, further, that the subject Pete SILAS was the money behind the organization.

The witness Ruth BURK further told your affiant that after this conversation with Bud NYKIEL that on a number of occasions she had observed at the Locust Street residence paraphernalia in the form of test tubes, plastic hoses, and other items, including chemicals, which led her to believe that there was a clandestine laboratory somewhere in the Fontana area.

The witness Ruth BURK stated to your affiant that she had a number of conversations with Sherry RIGDON, who she had observed purchasing amphetamines from NYKIEL; and Sherry RIGDON had told her that there was a subject by the name of Pete SILAS involved with Bud NYKIEL and John WILSON in the manufacturing and sale of amphetamines and that this

subject lived in the Riverside area and that he lived in a large house on top of a hill and there were several military-type vehicles around the residence.

Witness Ruth BURK further told your affiant that she was introduced to the subject Pete SILAS by Bud NYKIEL, this occurring at the residence of Bud NYKIEL on Locust Street and, also, present at that time was John WILSON and, further, she met the subject Pete SILAS on two other occasions, both times he was with the subject John WILSON. The witness also stated that her daughter, Cherri RANKIN, had also met the subject Pete SILAS.

IDENTIFICATION OF SUSPECT:

SYLVAS JOHN SCHLAX, AKA: PETE SILAS

On 10-19-76, the affiant showed to the witness Ruth BURK a photostatic copy of California drivers license #J477729, with all of the written information on the drivers license covered; and Ruth BURK made a tentative identification of the photograph as being the subject she knew as Pete SILAS; however, she stated that she could not be certain.

On 10/19/76, affiant will attest that Det. Sgt. Gene Bowlin contacted Cherri RANKIN, daughter of the witness Ruth BURK, and showed to her the photostatic copy of California drivers license J477729. With all of the printed information on the drivers license covered, the subject Cherri RANKIN identified the photograph on the drivers license as being of the person she knows as Pete SILAS.

California drivers license J477729 was issued to Sylvas John SCHLAX, a white male adult 33 years, 11-22-42, 6-0, 180 brn/brn.

INTERVIEW: JO ANNE ALLEN:

Affiant will attest that on October 15, 1976, the witness Jo Anne ALLEN was interviewed by Det. Sgt. Gene Bowlin of the Sheriff's Narcotic Division, at which time she gave the following information:

The witness Jo ALLEN stated that she has been using amphetamines since 1968; and from 1970 or 1971, she has been using amphetamines on a daily basis, taking two to three tablets every three to four hours.

The witness Jo Anne ALLEN further stated that in this six-year period of time, she has purchased amphetamines on hundreds of occasions, usually retaining a portion of the amphetamine tablets purchased for her own personal use, selling the remaining portion.

The witness Jo Anne ALLEN further stated to Sgt. Bowlin that two to three years prior to his death, witness ALLEN had purchased from Bud NYKIEL amphetamines on a regular basis. Further, in the early part of 1976, she was introduced to a subject Johnny WILSON at the residence of Bud NYKIEL. Following this introduction, she on a number of occasions purchased amphetamines from Johnny WILSON and Bud NYKIEL at the residence of Bud NYKIEL on Locust Street in Fontana.

The witness Jo Anne ALLEN further stated to Sgt. Bowlin that on a number of occasions, she had a conversation with Bud NYKIEL and John WILSON at the Locust Street address regarding a pill press, stating to her that they wished to locate a pill press which they could purchase.

The witness Jo Anne ALLEN further stated to Sgt. Bowlin that she had observed a subject, Beverly PETTEGREW, at the residence of Bud NYKIEL on Locust Street and that she (Jo Anne ALLEN) has on a number of occasions purchased amphetamines from Beverly PETTEGREW and her husband Dude PETTEGREW. The witness Jo Anne ALLEN also stated that she has observed Richard LUNSFORD at the residence of Bud NYKIEL, purchasing quantities of amphetamines and that she on several occasions has purchased amphetamines from the subject Richard LUNSFORD. The witness Jo Anne ALLEN also stated that she has accompanied a subject Celia CARNES to the residence of Bud NYKIEL and purchased amphetamines from Bud NYKIEL and Johnny WILSON at that location and that she (Jo Anne ALLEN) has purchased on several occasions amphetamines from the subject Celia CARNES.

CLANDESTINE LAB EXPLOSION:

Affiant will attest that he has reviewed San Bernardino County Sheriff's Department reports under DR 395144-03, which indicate that on July 24, 1976, at approximately 1130 hrs., an explosion occurred at 8668 Almond Avenue, in the Fontana area, and that injured in the explosion and fire was Frank John NYKIEL, who resided at 8577 Locust Avenue, Fontana, and, further, that the subject Frank John NYKIEL later died of injuries received in the explosion and fire.

Investigation at the location following the explosion and fire was conducted by Sheriff's Department personnel, including personnel from the San Bernardino County Sheriff's Crime Laboratory. Found at the location were large quantities of chemicals, chemical

solutions, chemical glassware items, and laboratory equipment and supplies.

Your affiant will attest that he has had personal conversation with Criminalist J. Robert Davidson, who has reviewed the chemicals and laboratory equipment seized at 8668 Almond Street address; and it is in the opinion of Criminalist Davidson that a clandestine laboratory was being operated at that location to produce methamphetamine.

ARREST AND INTERVIEW: RANDALL BENJAMIN

Affiant will attest Colton Police Department report number 76-6650, which indicates that on October 6, 1976, a Randall BENJAMIN was arrested and had in his possession 100,000 amphetamine tablets.

Your affiant will further attest that he has reviewed reports by Detective J. J. Donegan of the Sheriff's Narcotics Division regarding a subsequent interview of Randall BENJAMIN in which the subject Randall BENJAMIN told Det. Donegan that he had obtained the amphetamines from a Donald SCHREINER and that SCHREINER was operating a pill press somewhere in the San Bernardino County area, between Victorville and San Bernardino; that this pill press was capable of producing 125,000 amphetamine tablets per day.

Affiant will attest that Det. Donegan's report further indicates that Randall BENJAMIN stated that he was told by Donald SCHREINER that he (SCHREINER) was working for Johnny WILSON and another subject known as "PETE", and, further, that the two subjects, Johnny WILSON and "PETE", were in the process of purchasing a large pill press capable of producing in excess of 600,000 amphetamine tablets per day; and that

this purchase of this pill press was to take place in the near future; and that he (BENJAMIN) had been approached by SCHREINER to operate one of the presses.

Your affiant will further attest that under the direction of Sgt. Gene Bowlin and Det. J.J. Donegan that the witness Randall BENJAMIN was wired with an electronic monitoring device and returned with the 100,000 amphetamine tablets to the residence of the subject Donald SCHREINER at 1153 7th street in Colton and that your affiant has reviewed the tape recording obtained with the use of the monitoring device in which the subject Donald SCHREINER gave instructions to the witness Randall BENJAMIN regarding the handling of the 100,000 amphetamines and the money to be obtained from the sale of the amphetamines.

EXECUTION OF SEARCH WARRANT: (CAJON PASS AREA)

The affiant will attest that on October 7, 1976, that he personally served a search warrant signed by Judge Theodore Krumm of the San Bernardino County Municipal Court on a residence located in the Cajon Pass area of San Bernardino County and found at that location, as a result of the service of the search warrant, the subject Donald SCHREINER operating a pill press which was producing amphetamine tablets; and further seized at that location were several hundred thousand amphetamine tablets and amphetamine powder.

EXECUTION OF SEARCH WARRANT AT 18569 11th STREET, BLOOMINGTON, CA:

Your affiant will attest that he has reviewed reports by Det. Tom Koleszar, Deputy Alex Cordova, and Deputy Mike Lewis regarding the service of a search warrant at

18569 11th Street, Bloomington, California, the residence of Dude and Beverly PETTEGREW. The search warrant was signed by Municipal Court Judge Theodore Krumm and was executed on October 7, 1976.

Your affiant determined from reviewing the report that seized as the result of the search warrant was a quantity of amphetamine tablets, being several thousand in number.

EXECUTION OF SEARCH WARRANT AT 8587 LOCUST STREET, FONTANA, CA:

Your affiant will attest that he has reviewed reports by Det. Patrick English and Det. Rod Denney, regarding the service of a search warrant at 8587 Locust Street in Fontana. The search warrant was served on October 7, 1976, and signed by Theodore Krumm, Judge of the San Bernardino County Municipal Court.

Your affiant determined that as a result of the review of the reports that seized at the Locust Street address were documents and correspondence with the name of John WILSON, one of the documents being a letter which contained a formula for making the precursor chemical Phenyl-2-Propanone, which is a chemical used in the manufacturing of methamphetamine.

Affiant will further attest that while Det. English and Denney were at the Locust Street address residence, that they received two phone calls—one being from a female and a second from a male. Both subjects asked for Johnny or Pete, leaving a call-back number of 825-5056. Det. Denney had a conversation with the male subject who stated that he was to do a deal with Johnny or Pete tonight and to have Johnny or Pete call him at the number of 825-5056.

Affiant will attest that he has further reviewed reports by Det. English and Det. Denney, whereas at approximately 1820 hrs. on October 7, 1976, Det. Denney placed a phone call to 825-5056 and talked to the subject Jerry, later identified as Jerry Keith MARTIN, and arranged to meet the subject at Rancho and "C" Street in Colton and advised the subject Jerry that Pete would meet him at that location.

As a result of the phone call placed to subject Jerry, he did arrive at Rancho and "C" Street and was driving a large van truck. A subsequent search of the truck located a large multiple-stage pill press. Affiant will further attest that he has reviewed reports by Det. Sgt. Gene Bowlin who interviewed the witness Jerry Keith MARTIN on October 26, 1976, at which time subject Jerry Keith MARTIN stated the following:

Subject MARTIN stated that he is an associate of John Joseph SWETKOVICH, who is a major trafficker in amphetamines in the San Bernardino County area. He stated that he was contacted on October 6, 1976 by the subject SWETKOVICH, who instructed him to contact Johnny WILSON and attempt to sell to WILSON the large pill press for a price of $9,000.00. The witness MARTIN stated at that time the press was located in a residence in the Adelanto area and that he (MARTIN) had operated the press with the subject SWETKOVICH, producing in excess of 500,000 amphetamine tablets on one occasion.

The witness Jerry MARTIN further stated that he has been involved in transactions between John SWETKOVICH and John WILSON and Bud NYKIEL in which the subject SWETKOVICH would trade to NYKIEL and WILSON quantities of Phenyl-2-

Propanone in return for the finished product of mehtamphetamine powder.

The subject Jerry Keith MARTIN further stated that he did make telephone contact with the subject Johnny WILSON regarding the sale of the pill press. The subject WILSON advised MARTIN that they were interested and would contact MARTIN later if they wished to complete the transaction. The witness Jerry MARTIN also stated that in a conversation with Johnny WILSON, he was told by Johnny WILSON that if he (MARTIN) called and WILSON was not there, it was all right to talk to the subject "Pete."

The witness Jerry MARTIN further stated that he was contacted later in the day by telephone by a male subject who identified himself as "Pete." Subject "Pete" told MARTIN that they would purchase the pill press for $10,000 and that he would contact MARTIN sometime around 6 PM on October 7, 1976, to complete the transaction.

The witness Jerry Keith MARTIN further stated that in the evening hours of October 7, 1976, that he and his wife, Theresa, did place telephone calls to the Locust Street address, the former residence of Bud NYKIEL and the present residence of Johnny WILSON. The primary reason for placing the phone calls was to give Johnny WILSON or the subject "Pete" a new telephone number which they had installed at their residence on that day.

Witness Jerry Keith MARTIN further stated that he had removed the pill press from the Adelanto location and had it on a rented truck and was prepared to deliver the press to the subject Johnny WILSON or "Pete" at the Rancho and "C" location when he was apprehended.

PHONE TOLL INFORMATION:

Affiant will attest that he has contacted the owner of the property at 7803 Tamarind, Fontana, and determined that the rent on the property at the Tamarind Street location was paid by the subject John WILSON for the months of June and July. Affiant further attests that he has determined that the telephone located at the Tamarind Street location was 822-0833.

Pursuant to a search warrant dated November 4, 1976, served on Pacific Telephone Company, phone toll information was received showing a number of toll calls from the 822-0833 phone to a Riverside area number, 682-8056. Subscriber information obtained from the Criss-Cross Reference Directory shows that the 682-8056 number is listed under the name of Sylvas John SCHLAX, 3403 Avalon Street, City of Riverside.

Affiant will further attest that phone toll information was obtained for telephone number 823-9426. This number was listed to the residence and the subject Frank John NYKIEL at 8587 Locust Street in Fontana; and it was determined from the phone toll information that from May through July 20th, a number of calls were made from the 823-9426 number to 682-8056, this being the residence of Sylvas John SCHLAX, 3043 Avalon Street, City of Riverside.

IDENTIFICATION OF SYLVAS JOHN SCHLAX & FRANK JOHN NYKIEL - L.A. CHEMICAL COMPANY:

Affiant will attest that on October 28, 1976, Det. Bob Higgins contacted Mr. Mannie Mendoza of L.A. Chemical Company, Downey, California, and displayed to Mr. Mendoza a number of photographs of suspects involved in this investigation. Mr. Mendoza selected the

photograph depicted on drivers license #J477729, issued to Sylvas John SCHLAX and also selected a standard SBSO color mug photograph #45909, depicting the subject Frank John NYKIEL. Mr. Mendoza stated that the two subjects, Sylvas John SCHLAX and Frank John NYKIEL, had been together on at least two occasions between January of 1976, and July of 1976, at the L.A. Chemical Company purchasing chemicals.

RESIDENCE OF SYLVAS JOHN SCHLAX:

Affiant will attest that on October 28, 1976, Det. Felix D'Amico and Sgt. Gene Bowlin of the Sheriff's Narcotics Division proceeded to the 3400 block of Avalon in the Riverside area; and on that day, aforementioned officers observed that the only residence in the 3400 block of Avalon was a residence located on top of a hill and surrounded by 6' high chain link fence. It was observed that there were no numbers identifying the property; however, from a vantage point located adjacent to the 3403 Avalon property, Det. D'Amico identified a male subject working in the rear yard area of the property as being the subject Sylvas John SCHLAX. Also observed from the same location was a number of military-type vehicles parked to the rear of the residence.

ADDITIONAL CORROBORATING INFORMATION:

The witnesses, Jo Anne ALLEN and Ruth BURK, both stated that they have observed Richard LUNSFORD and Celia CARNES purchasing quantities of amphetamines at the residence of Bud NYKIEL. Affiant attests that he has reviewed San Bernardino Sheriff's Department reports which show that in February of 1976, that the subject Richard LUNSFORD was arrested for possession of amphetamines and, further, that on May 28,

1976, Celia CARNES was arrested by Sheriff's Department personnel in possession of amphetamines for sale.

As a narcotics officer for the Sheriff's Department, County of San Bernardino, the affiant has participated in the investigation of at least six major narcotic-conspiracy cases; and this officer has found, through experience, that located within the residence of the suspected co-conspirators are documents evidencing the existence of a conspiracy. Such documents include telephone numbers of co-conspirators, correspondence between co-conspirators, maps showing specific locations, documents relating to drug transactions, and documents containing names of other co-conspirators.

The affiant attests that the above-contained information tends to show that a continuing conspiracy exists with the persons named in the affidavit to manufacture, distribute, and sell amphetamines, a controlled substance, in the County of San Bernardino, therefore showing a felony has been committed and is continuing to be committed in the County of San Bernardino, State of California.

I declare under penalty of perjury that the foregoing is true and correct.

And this complainant prays that a search warrant may be issued to search for the same, and that the same may be brought before a magistrate and disposed of according to law.

_____

James Bryan

_____

_____

Subscribed and sworn to before me this 16th day of November 1976.

Patrick J. Morris

Judge of the Superior Court District
Central Division
County of San Bernardino
State of California

IN THE SUPERIOR COURT DISTRICT,
CENTRAL DIVISION,
COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

SEARCH WARRANT

(Penal Code 1529)

THE PEOPLE OF THE STATE OF CALIFORNIA: To any Sheriff, Constable, Marshal, Peace Officer, or Policeman in the County of San Bernardino:

Proof, by affidavit, having been this day made before me by James Bryan, a duly authorized Deputy Sheriff with the County of San Bernardino, that there is probable cause for believing that: at 3403 Avalon Street, Riverside, California, County of Riverside, there are personal phone books, correspondence between conspirators listed in this affidavit, receipts for certain chemicals, phone bills showing toll calls between conspirators listed in the affidavit, paraphernalia indicative of preparational process of certain illegal drugs and/or narcotics or the manufacturing hereof, and ledgers showing narcotic transactions being possessed at this residence all to show furtherance of the conspiracy as to SYLVAS JOHN SCHLAX, AKA: PETE SILAS, and other conspirators listed in this affidavit, all which show a felony is being and has been committed in the San Bernardino County area, State of California.

YOU ARE COMMANDED at any time of the day to make immediate search of the premise including but not limited to 3403 Avalon Street, Riverside, County of Riverside, residence being described as a one-story stucco, tan in color residential-type dwelling located on the southwest corner of 36th Street and Avalon in Riverside, further described as being the only residence in the 3400

block of Avalon, having an additional portion built onto the residence in the form of block walls located in the southwest portion of the residence. The residence is further described as having a 6' chain link fence around the property with the entrance being a large gate on the south side of the residence, entrance off of 36th Street, and a large gate and entrance on the east side of the residence being Avalon Street.

for the following property:

1. Personal name, address phone book.
2. Correspondence from John WILSON, Frank NYKIEL, Dude PETTEGREW, DONALD SCHREINER concerning the business of manufacturing and selling amphetamines.
3. Invoices showing purchases of dies from Los Angeles Chemical Co. to Pete SILAS, Sylvas SCHLAX, or Frank NYKIEL during the year 1976.
4. Pacific Telephone Co. monthly phone bills during the year 1976.
5. Ledgers of drug transactions showing names of customers, quantities sold, and price.
6. Price lists for illegal drugs.
7. Amphetamines, methamphetamines.
8. Personal check register of Sylvas SCHLAX.
9. Cancelled checks written to L.A. Chemical Co., Frank NYKIEL, John WILSON, Dude PETTEGREW, Donald SCHREINER.

10. Passbook on savings account to show withdrawal of large amounts of cash during 1976, to finance drug purchases.

and if you find the same or any part thereof, to bring it forthwith before me at my Courtroom.

GIVEN UNDER MY HAND, and dated: November 16, 1976.

Patrick J. Morris

Judge of the Superior Court
Central Division
County of San Bernardino
State of California

PROOF OF SERVICE

State of California, County of
San Bernardino

I am a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 255 N. "D" St., Ste. 411, San Bernardino, California. On 11/16, 1979, I served the within Petition for Writ of Certiorari and the Points and Authorities in Support of Writ of Certiorari on all interested parties to said action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Bernardino, California addressed as follows:

George Deukmejian (3)
Attorney General
State of California
3580 Wilshire Blvd. Rm. 800
Los Angeles, CA. 90010

James Cramer
District Attorney
County of San Bernardino
316 N. Mt. View
San Bernardino, CA. 92415

Honorable Don A. Turner
Judge of the Superior Court
County of San Bernardino
351 N. Arrowhead Avenue
San Bernardino, California

I, BARBARA CRAIG, declare, under the penalty of perjury, that the forgoing is true and correct this 16th day of November, 1979, at San Bernardino, California.

Barbara Craig

BARBARA CRAIG